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West Virginia. Constitutional convention,
1861-1863.

Debates and Proceedings
OF THE
First Constitutional Convention
OF
West Virginia
(1861 - 1863)

Edited By

CHARLES H. AMBLER,

FRANCES HANEY ATWOOD AND WILLIAM B. MATHEWS

Under Direction of the

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

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DEBATES AND PROCEEDINGS
OF THE FIRST CONSTITUTIONAL CONVENTION
OF WEST VIRGINIA

1861 - 1863

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PREFACE

Proposals for book form publication of the debates and proceedings of the First Constitutional Convention of West Virginia were rejected at the outset of the deliberations. This was primarily because of the limited funds available and because of uncertainty regarding the length and purpose of the meeting. Nevertheless, Granville D. Hall, reporter for the Wheeling *Daily Intelligencer*, kept stenographic notes both of the debates and the proceedings. While the reports of the several committees were being put in final form at the end of the regular session, Hall did not make a complete record, but such notes as he took for that period were later supplemented by clippings from the published *Journal* and from the Wheeling *Daily Intelligencer*. The first use of these supplemental materials, as compiled by Hall, in the present publication is on page 219 of Volume II. This use is indicated there and elsewhere by footnote citations and marginal indentations.

Toward the end of the recalled session attention was called to Hall's notes, and, without a dissenting voice, its executive committee was authorized to contract for transcribing them "with a view to publication hereafter." At the same time a motion to authorize the Committee to publish the debates and proceedings "at this time or at any subsequent period" was rejected, but not without expressions from delegates to the effect that the record of their work should and would be published. From records made by the convention secretary the *Journal* of the proceedings of the regular session had meanwhile been published in book form.

Although the authorized transcribing was not done, the circumstances under which Hall's notes were made, together with interest in them and their admitted importance, were such as to cause him to keep them. When Virginia sued West Virginia in 1906 to compel her to pay part of the bonded debt of the former, as of January 1, 1861, the existence of these notes was brought to the attention of West Virginia officials who purchased them on condition that they be transcribed into longhand or into typed copies. This transcribing, part in longhand and the remainder typed, was completed in 1907, when the resulting copy covering the debates and proceedings of both the regular and the recalled session, became the property of West Virginia.

From time to time following 1907 various persons expressed interest in having Hall's notes published for purposes of contemporaneous legal interpretations and for their possible historical values. Judge Jo N. Kenna of the West Virginia Supreme Court of Appeals, was especially active. He interested members of the Court in the matter and prevailed upon legislative committees to approve the necessary budget item. Meanwhile one of four typewritten copies of Hall's notes, made under the direction of the late Clifford R. Myers, State Historian and Archivist of West Virginia, had been placed in custody of the Court which requested William B. Mathews, associate clerk, to compare the typed copy with the original with a view to indexing the former.

At this juncture Governor Homer A. Holt, with a view to interesting the State Budget Commission, approved a suggestion of Professor C. H. Ambler of West Virginia University, to the effect that he prepare a suitable introduction for the proposed publication. In the course of efforts to comply with this approval, knowledge of the Court's plans came to light and a conference of interested parties followed. At this conference it was decided that the work of editing and otherwise preparing the debates and proceedings for publication should continue as previously planned. These plans were accordingly brought to the attention of the legislature, which on March 6, 1939, adopted the following:

> "SENATE CONCURRENT RESOLUTION No. 9
>
> "Relating to the publication of the reports of the West Virginia Constitutional Convention of one thousand eight hundred sixty-one—one thousand eight hundred sixty-two—[one thousand eight hundred sixty-three.]
>
> "WHEREAS, The reports of the West Virginia Constitutional Convention of one thousand eight hundred sixty-one—one thousand eight hundred sixty-two, are of great and inestimable value from a historical, educational and legal point of view; and
>
> "WHEREAS, Said reports, in original form, now repose in the department of archives and history, unpublished and unavailable generally for the purpose aforesaid; and
>
> "WHEREAS, It is the sense of the Legislature of West Virginia that it is proper and desirable that such reports should be preserved and bound, and published as an official record of the proceedings of said Constitutional Convention; therefore, be it
>
> *"Resolved by the Senate, the House of Delegates concurring therein:*
>
> "That the report of the West Virginia Constitutional Convention of one thousand eight hundred sixty-one—one

> thousand eight hundred sixty-two, be published under the direction of the supreme court of appeals, and that the same be printed and distributed by the various officers, agents and departments of the state of West Virginia in like manner as are the West Virginia Reports of the supreme court of appeals; and, be it
>
> "*Further Resolved*, That the costs for the printing and distribution of such publication shall be paid from such appropriation as the legislature shall see fit to make for such purposes."

In pursuance of this resolution the legislature appropriated $10,000, the estimated cost of printing and binding the debates, and on October 2, 1939, the State Supreme Court of Appeals entered the following order:

> "In re Reports of Debates of the First Constitutional Convention of West Virginia.
>
> "Pursuant to Senate Concurrent Resolution No. 9, Legislature of 1939, it is ordered that the Reports of the Debates of the First Constitutional Convention of West Virginia held in the city of Wheeling, beginning on November 26, 1861, and of the Recalled Session thereof beginning February 12, 1863, be published, and that the edited manuscript copy of the proceedings of said convention be turned over to the Attorney General for that purpose."

As soon as practicable thereafter competitive bids were taken and the contract for the publication was let. This part of the undertaking was delayed somewhat by efforts on the part of those concerned to determine the quality of paper and binding to be used. It was their desire to use materials that would last for several hundred years. Inasmuch as the proceedings, as recorded by Hall, were fuller than those kept by the secretary of the Convention, they too were published along with the debates. As a consequence republication of the original *Journal* was unnecessary.

Editing, printing, and binding the present publication was under direct supervision of the West Virginia Supreme Court of Appeals. The manuscript was verified by William B. Mathews and read and corrected by Mrs. Frances Haney Atwood and Mrs. Mary Grace Bobersky of the Attorney General's Office. The indexing was by William B. Mathews and James E. Brown, court attaches. The minutes of the meetings of the Board of Commissioners of the regular session, the Address of the delegates in the recalled session, the minutes of the Executive Committee of the recalled session, and the constitution as originally drafted are printed in Volume III as appendixes A, B, C and D, respectively.

INTRODUCTION

This introduction is presented in two parts. Part One is a historic background of the First Constitutional Convention of West Virginia and a summary of its proceedings and debates with respect to points that were determining. It also follows the Constitution through the several steps in the course of its various approvals until West Virginia, under it as amended in the recalled session, became the thirty-fifth state in the Union. The historic background is supplemented by biographical data and sketches which constitute Part Two.

PART ONE

1. THE VIRGINIA BACKGROUND[1]

Before the inhabitants of present West Virginia attained separate statehood they lived under three constitutions: that of 1776, that of 1830, that of 1851. The first of these documents was made in an irregular manner, as determined by present day practices, and was undemocratic. By amendments providing for abolition of slavery, extension of the suffrage, equalization of representation in the general assembly, and free public schools, Thomas Jefferson would have corrected the most objectionable of these defects, but he became interested in federal and international matters and was thus diverted from his plans and purposes with respect to Virginia, but not before he had helped to abolish the state church, primogeniture and entail.

Virginia's second constitution was the product of the famous Convention of 1829-30. At that time a wave of democracy with fountainhead in the trans-Allegheny West and feeder affluents in the Old World, had extended to the Atlantic seaboard and was effecting changes in fundamental laws. In response thereto Virginia, whose territory reached beyond the Alleghenies, extended the suffrage to certain nonfreeholders, altered the basis of representation in the general assembly, and made reforms in her local government. As representation in the general assembly remained on an arbitrary basis[2] and as state and county officers were appointed by the general assembly and the governor, respectively, transmontane residents, especially those west of the Alleghenies, continued to insist upon a more equitable representation and upon the alleged right of the voters to choose all officers, both state and county, upon a white manhood suffrage basis. By such reforms they sought to control the legislative branch of the state government, with all that implied, and "to place Virginia in line with other states of the Union." Efforts looking to these ends failed in 1840, but they were given an opportunity in 1850, when another constitutional convention was authorized.

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[1] See Charles H. Ambler, *Sectionalism in Virginia 1776-1861* (Chicago, 1910) and *Francis H. Pierpont* (Chapel Hill, N. C., 1937); James C. McGregor, *The Disruption of Virginia* (New York, 1922); Henry T. Shanks, *The Secession Movement in Virginia, 1847-1861* (Richmond, 1934).

Although the Constitution of 1851 adhered to the practice of electing delegates (152) to the general assembly by counties and districts and senators (50) by senatorial districts, the allotments of delegates to the transmontane sections were satisfactory. At the same time referenda on the basis of representation in both branches of the general assembly were authorized for 1865 and at intervals of ten years thereafter; the suffrage was extended to all white men of voting age; state and county officers were made elective by the voters; and annual sessions of the general assembly gave way to biennial sessions limited to ninety days duration. These reforms were so far-reaching that the body making them was called the "Reform Convention."

Despite the fact that the first governor of Virginia under the Constitution of 1851, was Joseph Johnson, from Harrison County in the trans-Allegheny, that section was not satisfied with its fundamental law and continued to propagate suggestions looking to the formation of a new state west of the mountains. Representation in the state senate was on an arbitrary basis which gave the east thirty senators to twenty for the west and permitted the former to appropriate the lion's share of the state expenditures. Moreover, and of greater concern to the west, the east, as a safeguard against its surrender of political power, had in 1851 incorporated into the constitution of that date an objectionable property classification. Under this provision all property, except slaves, was taxable at its full and actual value; slaves under twelve years of age were not subject to taxation; and the tax on a slave above that age could not exceed that "on land of the value of three hundred dollars."[3]

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[2] Counties east of the Blue Ridge had 78 delegates and 19 senators, while those west thereof had 56 delegates and 13 senators.

[3] The wording of this provision was: "Every slave who has attained the age of twelve years shall be assessed with a tax equal to and not exceeding that assessed on land of the value of three hundred dollars. Slaves under that age shall not be subject to taxation." Virginia, *Code* (1860), (2d Ed.), p. 46.

Thus the westerners were forced to pay on their calves, colts, lambs and pigs, whereas pickaninnies were exempted, and the tax on slaves above the age of twelve was on a fixed valuation which, except for the aged and infirm, rarely exceeded actual values.

After 1845 efforts toward Southern unity tended to alleviate the grievances of the northwest. From time to time Virginians in accord with this tendency, for the most part followers of John C. Calhoun, tried to carry the trans-Allegheny population with them, and concessions for that purpose involving schools, internal improvements, and state elective and appointive officials, were effective with many local political leaders. Even ministers of the gospel tended to go along, as indicated by the growth of the Methodist Episcopal Church, South, in the trans-Allegheny after 1846. To those among its residents who were interested in industry, and to members of the Methodist Episcopal Church, the pro-Southern movement was, however, objectionable, even aggravating. To the few who had come under Abolitionist influences, for instance, Francis H. Pierpont, Gordon Battelle, John G. Jacob, and Archibald W. Campbell, the movement was fraught with treason.

When the presidential election of 1860 precipitated a crisis in these matters and South Carolina carried the pro-Southern movement to the conclusion formerly indicated by Calhoun, the grievances of northwest Virginia were magnified, and its situation as a prospective cockpit of internecine strife became alarming. Although less than two thousand of its residents had voted for Abraham Lincoln, none of them doubted the legality of his election and most of them were willing to abide by the consequences. In this they trusted Lincoln's former Whig affiliations and his conciliatory pronouncements to steer his course along conservative lines. The Abolitionist menace was admittedly imminent, but, as in the past, most West Virginians hoped to avoid the possible consequences through compromise.

Under such conditions the course of Governor John Letcher in convening the general assembly in extra session on January 7, 1861, and its authorization of a convention without popular approval seemed to be an unnecessary, even ominous surrender to the "Slave Power." Although the moderate (70) and Unionist (50) delegates in this convention, which met February 13, 1861, outnumbered avowed secessionists four to one, the northwest was apprehensive. Some of its leaders predicted that, "Virginia will be dragged out of the Union." When, following the attack upon Fort Sumpter and Lincoln's call for troops to be used to coerce South Carolina, secession was finally accomplished on the score of resistance to coercion, most of the thirty-two delegates from the northwest, who had voted against it,[4] tarried in Richmond to await a "more favorable turn of events." When this did not come and their presence there became objectionable to former friends and dangerous to themselves, they held a conference in the Powhatan Hotel and resolved to return to their constituents.

2. *THE WHEELING CONVENTIONS OF 1861*[5]

A new state movement had meanwhile been launched in the northwest. The Richmond Convention approval of the Secession Ordinance (April 17, 1861) gave momentum to this movement which in its earlier stages was spontaneous and not confined to any particular locality. In a short time the new state movement found a directing hand in John S. Carlile, a representative in Congress and a member of the Virginia Convention of 1861. His was the directing mind in the Clarksburg Convention of April 22, 1861, which adopted resolutions condemning the Secession Ordinance, urging the people of the northwest to rally in defense of their rights and their safety, and recommending that they appoint delegates of their "wisest, best, and discreetest men" to meet "in Convention on the 13th day of May next, to consult and determine upon such action as the people of Northwestern Virginia should take in the present fearful emergency."[6]

This program came in the nick of time. Every regular civilian organization in northwest Virginia was rapidly disintegrating and assuming a militant air; public officials were resigning their posts; bands of armed men were traversing the public highways in search of such advantages as suited their respective purposes; and farmers, mechanics, and business men of every class left their labor to swell the groups congregating here and there to discuss "the situation." In fact, the feeling of disquiet and distrust was so general and intense as to overshadow the usual order of society. Roads were picketed in every direction; the peaceful yeomanry, not yet aroused to the exigencies of the situation, stood aghast; and all classes despairing of police protection, were preparing to protect their lives and their liberties.[7]

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[4] Of the 47 delegates from present West Virginia 32 voted against secession, 11 for it, and 4 did not vote. Two of those who did not vote later signed the secession ordinance, as did also two of those who voted against it. See Charles H. Ambler, *West Virginia The Mountain State* (New York, 1940), pp. 321-322.

[5] For debates and proceedings of these conventions see Virgil A. Lewis, *How West Virginia Was Made* (Charleston, W. Va., 1910), pp. 35-302.

[6] For text of these resolutions see Lewis, *How West Virginia Was Made*, pp. 33-34.

In pursuance of the Clarksburg call "delegates" met in what is known as the "First Wheeling Convention."[8] In the outset a majority of these delegates were determined upon separate statehood. In keeping with precedents, such as Vermont, Kentucky and Tennessee, their leader, Carlile, saw no insurmountable difficulties in such a course and relied upon the exigencies of the situation to meet its admitted legal technicalities. To other delegates, notably Waitman T. Willey, this course involved possible treason, not only to Virginia and the Southern Confederacy but also to the Federal Government. Still others, among them the ablest members of the Convention, questioned both the expediency and the legality of Carlile's proposal. As Virginia had not yet taken a poll on the Secession Ordinance, his proposal was condemned as unwise and possibly unnecessary, and was abandoned. Instead, the convention authorized the choice of delegates to a constituent assembly to meet on June 11, at a place to be designated by a central committee which was to carry on in the interim.[9]

While the First Wheeling Convention was in session Virginia was being armed and otherwise prepared to meet Lincoln's threatened coercion of the southern states. Before the poll on the Secession Ordinance was taken, Virginia had, in fact, made a temporary alliance with the Southern Confederacy, whose capital was early in June, 1861, transferred from Montgomery, Alabama, to Richmond, Virginia. Meanwhile, steps had been taken to mobilize the Virginia militia in defense of the Confederacy. As a consequence, when the date (May 23) for the referendum came, "thirty thousand glittering bayonets surrounded the polls from the Chesapeake to the summit of the Alleghenies."[10]

In face of these conditions the northwest voted almost ten to one against secession, which was however approved by a large majority of the voters of the State. Under the circumstances, the northwest refused to accept the results. Like the east in its unauthorized course in allying Virginia with the Southern Confederacy before that action had been approved by the voters, the Central Committee of the First Wheeling Convention, acting on the score of loyalty and safety, was already mobilizing in defense of the Union. For that purpose guns and ammunition were being assembled in Wheeling, and President Lincoln, through his Secretary of War, had promised to sustain the Central Committee in its militant preparations.[11] In May, 1861, the First (West) Virginia infantry was organized at Wheeling from volunteer companies formed in April, 1861, to resist threatened aggressions from the seceders. May 30, one week after the popular vote on the secession ordinance, this regiment, under command of Colonel Benjamin F. Kelley, arrived at Grafton.

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[7] Ambler, *Francis H. Pierpont,* p. 82.

[8] This convention was more of a mass meeting than a constituent assembly, but authorities are not agreed on this point. For evidence supporting the claim that it was a convention see Lewis, *How West Virginia Was Made,* p. 35. See also Ambler, *Francis H. Pierpont,* p. 82.

[9] The members of this committee were John S. Carlile, Francis H. Pierpont, James S. Wheat, Chester D. Hubbard, Campbell Tarr, George R. Latham, Andrew Wilson, S. H. Woodward, and James W. Paxton.

[10] William P. Willey, *Formation of West Virginia* (Wheeling, W. Va., 1901), p. 47.

Buoyant over the results of the Battle of Philippi, of June 3, the Central Committee permitted an election of delegates, set for June 4, to go forward. One week later they met in the "Second Wheeling Convention."[12] After again rejecting Carlile's proposal to proclaim a new state, this convention on June 17 adopted a declaration of rights,[13] which reiterated the right of revolution, as set forth in the Virginia Bill of Rights of 1776, and reaffirmed in 1830, and again in 1851. Two days later the convention established the "Reorganized Government of Virginia."

Thereafter installation of the loyal Virginia regime went forward rapidly. On June 20, Francis H. Pierpont was elected "Governor of Virginia," until such time as an "election can be properly held." At the same time other elective state officers were designated; local government was fitted into the changed situation; and loyal persons chosen in the preceding May were authorized "to discharge the duties and exercise the powers pertaining to the General Assembly." The constitutional provision requiring the presence of a quorum in each house for the legal transaction of business, was met by a proviso that "a majority of each branch of the members qualified . . . shall constitute a guarantee to do business." June 25 the Convention issued "An Address . . . of the People of Northwestern Virginia"[14] and recessed "to meet again on the first

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[11] Ambler, *Francis H. Pierpont*, p. 92.

[12] For proceedings see Lewis, *How West Virginia Was Made*, pp. 77-302.

[13] For text of this declaration see Lewis, *How West Virginia Was Made*, pp. 171-173. For facsimile of the names of the signers see J. Marshall Hagans, *Sketch of the Erection and Formation of West Virginia* (Reprint, Charleston, W. Va., 1927), p. 40.

[14] For text of this address see Lewis, *How West Virginia Was Made*, pp. 175-182.

Tuesday in August next . . . unless otherwise ordered by the Governor with the advice of his Council."[15]

As Virginia then had a short ballot, only the governor, lieutenant governor, and attorney general being elected by the voters, the work of completing the reorganization of the state government was passed to the general assembly which was convened in extra session on July 1 by Governor Pierpont. After completing this work and adopting measures for defense, the general assembly filled vacancies in the United States Senate caused by the withdrawal and subsequent expulsion of Robert M. T. Hunter and James M. Mason. For these key positions Waitman T. Willey was chosen for the term ending March 4, 1863, and John S. Carlile for the term ending March 4, 1865.

For a time, both in Washington and in Wheeling, the fate of the newly elected Senators was regarded as the acid test of the Virginia Reorganized Government. Already it had been recognized by the executive department of the Federal Government, but recognition by the legislative department was necessary to determine whether or not the loyal Virginia regime was republican in form. July 7, 1861, Senator Benjamin F. Wade of Ohio, telegraphed Pierpont saying: "Your Senators will be admitted to their seats whenever they appear whether the old ones are vacated or not."[16] Four days later they were declared vacated and on July 13 Andrew Johnson of Tennessee, who represented loyal elements in that state, presented the credentials of the loyal Virginia Senators. Despite Wade's assurances, their admission was questioned, but they were admitted. The vote on their admission was 35 for, to 5 against.[17]

The general assembly was meanwhile being importuned to form a new state.[18]On this point Campbell of the Wheeling *Daily Intelligencer* said, "There is no one thing that our people are more bent upon." Against the argument advanced by a number of persons to the effect that the bounds of the proposed state should be determined by a constituent assembly rather than by the legislature, others said "God has fixed the bounds of New Virginia." After a visit to New York, Marshall M. Dent, editor of the Morgantown *Star,* alleged that favorable legislative action on setting up a new state at that time had been prevented only through influence of Virginia bondholders. Although creditor influences were doubtless factors, failure to authorize a new state at that time was due rather to the opposition of those questioning the legality and the expediency of the procedure and the pro-slave status of the proposed state. If he were to live in a slave state, John G. Jacob of the Wellsburg *Herald,* preferred a "state that has a history,"[19] evidently Virginia.

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[15] The Governor's council was composed of Peter G. Van Winkle of Wood County, Daniel Lamb and James W. Paxton of Ohio County, William Lazier of Monongalia County, and William A. Harrison of Harrison County. Lewis, *How West Virginia Was Made*, pp. 142-157.

[16] Ambler, *Francis H. Pierpont*, p. 113.

[17] Senators opposed were Bright of Indiana, Bayard and Saulsbury of Delaware, Polk of Missouri, and Powell of Kentucky. See *Cong. Globe*, 37 Cong., 1 Sess., p. 109.

[18] Ambler, *Francis H. Pierpont*, pp. 110-112.

When the Second Wheeling Convention reassembled on August 6, 1861, pursuant to its own order, conditions in the northwest favored the new state movement. Lessons from "First" Bull Run (July 21) indicated a long and bitter war and banished thoughts of the temporary character and purpose of the Virginia Reorganized Government, as planned by Lincoln, Pierpont, and others. More effective still, Confederate troops had been driven out of large portions of the northwest by the defeat of General Henry A. Wise in the Kanawha Valley and of General Robert S. Garnett at Rich Mountain and Corricks Ford. As a result wavering leaders cast their lots with the Union, and the "peaceful yeomanry" and "ignorant peasantry," heretofore somewhat indifferent, found inspiration and leadership in the capable army officers who had come among them from the North. For decades thereafter residents of West Virginia remembered with pride and admiration the feats of "Little Mack," General George B. McClellan, who came among them not as a conquering invader but as a friend and protector. Among other things they told of how he forced his horse to walk a single log footbridge over a swollen stream, just to show his subordinates that it could be done.

After a period of waiting and sparring to determine whether the standing "Committee on Business," headed by Carlile, or a select committee, headed by the Rev. James G. West of Wetzel County, would act, the latter reported on August 13 "An Ordinance for the Division of the State." Despite conditions favorable to its success, this ordinance met with determined opposition. From the outset there was criticism of the proposed boundary, and, contrary to opinions entertained ever since even by scholars, the anti-slave state delegates were not enthusiastic for a new state. Federal authorities, notably Attorney General Edward Bates, intervened to oppose action, and Pierpont and his friends who had promised to go along with President Lincoln, were reluctant to abandon the Reorganized Government. William I. Boreman of Tyler County, who opposed a slave state, spoke of the new state proposition as "monstrous." But under the favorable military conditions, delegates from the "inner counties" which had already appropriated most of the state and federal offices, were insistent. Accordingly, the Convention on August 20, 1861, adopted "An Ordinance to Provide for the Formation of a New State out of a Portion of the Territory of this State."[20] The vote on this ordinance from present West Virginia was 48 for, to 27 against, with several delegates "paired off" and those opposed to a slave state generally voting "no."[21]

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[19] *Ibid.,* p. 112.

The proposed new State, first named "Kanawha," embraced thirty-nine counties, all of them west of the Alleghenies. Additional counties, seven of which, Greenbrier, Pocahontas, Hampshire, Hardy, Morgan, Berkeley, and Jefferson, were named, might be included, provided they so elected by majority votes in popular referenda set for October 24, following. In case they acted favorably, other contiguous counties and those thus made contiguous, might be admitted at the same time and in like manner.

3. *CONVENTION PERSONNEL AND ORGANIZATION*

Reflecting the same sectional opposition as the Convention vote on the Dismemberment Ordinance, the popular vote approving it was 18,408 for, to 781 against. The former included 273 votes cast by the Third (West) Virginia infantry then stationed at Beverly. There were no returns from Calhoun, Fayette, Logan, Nicholas, Wyoming and Webster counties,[22] but the ascertainable results were considered a sufficient authorization for Governor Pierpont to convene the delegates elected on October 24 in a constitutional convention to meet in Wheeling on November 26, to organize and make a constitution for the "State of Kanawha." As then contemplated, this was to have been accomplished by changing the existing constitution temporarily to suit the changed conditions. This was generally understood and was indicated in a provision of the Dismemberment Ordinance which authorized a referendum on the new state Constitution on the fourth Thursday of December, 1861.

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[20] For text of this ordinance see Lewis, *How West Virginia Was Made,* pp. 284-288.

[21] For map showing sectional character of this vote see Ambler, *Francis H. Pierpont,* p. 138.

[22] West Virginia Constitutional Convention, 1861-63, *Debates* (hereafter referred to as Convention, *Debates*), Vol. I, p. 240; West Virginia Constitutional Convention (Regular Session), *Journal* (hereafter referred to as Convention, *Journal*), Document No. 53.

As a result of the battles of Carnifex Ferry (September 10), Cheat Mountain (September 12), and the federal occupation of New Creek (Keyser) and the Kanawha Valley, military conditions continued favorable to the new state movement. However, only 34 of the 39 counties of the proposed State of Kanawha were represented on the first day of the Constitutional Convention. Because of disturbed internal conditions, Calhoun, Clay, Logan, Nicholas, and Webster counties had not elected delegates. Wyoming and Fayette counties were represented by William Walker and Captain James S. Cassady,[23] respectively, who had been selected irregularly and whose admission to membership raised the total number of delegates to 46 at the beginning of the session.

These members included three delegates from Hampshire and Hardy counties, embraced conditionally in the Dismemberment Ordinance. Because of a favorable military situation, especially the presence of Colonel Kelley at New Creek, adherents to the new State had so expressed themselves and had chosen delegates to aid in making a constitution. It mattered not that polls had been opened only at New Creek, Piedmont, Greenland and Kitsmillers, and that the total vote on adherence was only 345 for, to 18 against, whereas the combined vote of these counties in the presidential election of 1860 was 3,331. Thomas R. Carskadon of New Creek, and George W. Sheets of Piedmont, representing Hampshire County, and Abijah Dolly of Greenland, representing Hardy County, were admitted with a bare statement of the facts set forth in this paragraph.[24]

As determined by the exigencies of the situation other delegates reported from time to time and raised the total for the regular session to 53. At the request of 72 petitioners of Calhoun County, stating that, "on account of the Rebellion raging in their midst, and the disloyalty of the officers of our County, no election could be held, or was held, on the 4th Thursday of October last," Job Robinson, Esq., on January 7, 1862, was given a seat.[25] The following day Benjamin L. Stephenson, "delegate elect" from Clay County, was seated, as was also Benjamin H. Smith of Kanawha County, who "at the request of a number of citizens," was permitted to represent Logan County.[26] In a similar manner, John R. McCutchen on January 11, 1862, was seated as a delegate from Nicholas County,[27] and ten days later, Richard M. Cook and Johanis P. Hoback, both residents of Wyoming County and sponsored by its home guard, were admitted to represent Mercer and McDowell counties, respectively, neither of which was included specifically in the Dismemberment Ordinance. Following the resignation of Captain James S. Cassady, Edward W. Ryan, a Methodist Episcopal minister, on February 3, 1862, was seated as the delegate from Fayette County.[28]

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[23] Captain Cassady came direct from "Headquarters, Department of Western Virginia" and was on a thirty-day leave signed by General W. S. Rosecrans. He was seated at the request of fifty petitioners, most of whom were his companions in arms. Convention, *Debates*, Vol. I, pp. 8, 25-26.

[24] Convention, *Journal*, p. 17; Convention, *Debates*, Vol. I, pp. 53-54.

[25] Convention, *Journal*, p. 71; see also Convention, *Debates*, Vol. I, pp. 855-859.

Because of the conditions under which it met, as well as its accomplishments, additional personnel data of the Convention are of more than passing interest. All but fifteen of the sixty-one delegates in both the regular and the recalled sessions, were native born. Of the nonnatives, six were born in Pennsylvania; three in New York; two in Ohio; two in Massachusetts; one in Maryland; and one (John Hall, the president) in Ireland. Many of the native-born delegates had had Northern contacts. Of the sixty-one, twenty-one were farmers; fifteen were either ordained ministers or exhorters; and there were four physicians, three merchants, two mechanics, two school teachers, one salt manufacturer, one hotel keeper and one bank cashier. Ages ranged from 24 to 66, but the average was well above fifty.[29]

Only a few of the delegates knew much about the science and practice of government, but all were conscious of their representative capacity and their individual responsibility, which, more than anything else, was perhaps responsible for the prolonged session. Many of those from the northern counties later became identified with the new State and continued to hold positions of honor and trust. After a short time, most of those from the central, southern, and eastern counties dropped out of sight. Some of them fill unmarked and unknown graves.

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[26] Together with a petition signed by fifteen persons, Smith brought to the Convention a letter from Colonel Samuel A. Gilbert of the Twenty-Fourth Ohio volunteer infantry, who may have been responsible for the petition. See Convention, *Debates*, Vol. II, pp. 33-34; Convention, *Journal*, p. 75.

[27] McCutchen was seated at the request of one hundred fifty-nine petitioners. Convention, *Debates*, Vol. II, p. 219; Convention, *Journal*, p. 83.

[28] Convention, *Debates*, Vol. III, pp. 203-224; Convention, *Journal*, pp. 133-134.

[29] For names of delegates and their ages, places of birth, occupations and post office addresses see Introduction, Part II. See also Lewis, *How West Virginia Was Made*, p. 319, and West Virginia, *Second Biennial Report of the State Historian and Archivist*, [V. A. Lewis] (Charleston, W. Va., 1908), p. 194.

The influence of loyal groups in Kanawha, Wyoming, and Upshur counties, acting through the military and the Methodist Episcopal church, was a determining factor in certain phases of the convention's work, for instance in the decision to include counties which were not in control of federal forces and not eager for the dismemberment of Virginia. Doubtless as the result of a concerted plan and purpose, Kanawha County supplied the delegate for Logan County. In addition to being a rallying ground for federal home guards and regulars, Flattop Mountain in Wyoming County[30] supplied delegates both for McDowell and Mercer counties. The delegate from Pocahontas County, which was not represented in the regular session, was designated by a petition of fellow refugees to Upshur County, and the post office address of the Rev. John M. Powell, a delegate from Harrison County, was at that time Buckhannon, Upshur County, a Methodist Episcopal stronghold.

Although the Convention personnel from certain central, southern and eastern counties of the proposed state was determined in loyal nuclei and by the military, its esprit de corps was largely a product of the Christian ministry and its devout followers. In addition to the eight regularly ordained minister delegates, seven others, Captain Richard M. Cook, Waitman T. Willey, William Walker, Richard W. Lauck, Josiah Simmons, David S. Pinnell and John R. McCutchen, were exhorters, and most of the remaining delegates were followers of their minister guides and mentors. Eight of the minister delegates, Battelle, Brooks, Pomeroy, Ryan, Hagar, Tichenell, Trainer, and Powell, were conspicuous by their activity, and other delegates, even the two known Universalists, Hubbs and Soper, could not have escaped effects of the evangelical influences which had penetrated the mountain recesses of northwest Virginia since the days of Francis Asbury and the Great Awakening. The effects of these influences were attested in numerous ways, but in no way more than in the fact that five bishops of the Methodist Episcopal church were born in present West Virginia in the sixties of the last century. For additional data on this subject see biographical sketches (Introduction Part Two).

It is perhaps reasonable therefore to conclude that the movement resulting in the formation of West Virginia was closely related to evangelical Christianity of the Methodist Episcopal variety. For a long time thereafter it was said that, "the Methodists made

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[30] Flattop Mountain forms part of the boundary between Raleigh and Mercer counties but it extends into Wyoming County.

West Virginia," and as late as 1925 her University was described in an important educational center of the Middle West as "a state institution under control of the Methodist Episcopal Church." But for the purposeful and practical objective of the leaders, as determined by their refusal to permit Battelle to speak at length on his proposal for the gradual abolition of slavery, the new state movement could and probably would have been sponsored by religious zealots. Their final victory in bringing about gradual abolition through the intervention of Congress led to the erroneous conclusion in some quarters, notably eastern Virginia, that "The Abolitionists made West Virginia."

There is a large element of truth in statements regarding the part of the Methodists in making West Virginia. While the politicians and the elite who had so gratuitously assured their friends in the east that "the trans-Allegheny will be with you to a man," were either fighting to make good their promise or remaining neutral to save their hides and their property, Methodist Episcopal circuit riders and their allies were penetrating the remotest recesses of the northwest to preach the gospel of salvation to "the people" and rally them to fight for the Union.

Apropos of this point the following comment by the able and observing General Jacob D. Cox, who in 1861 worked in close cooperation with Methodist Episcopal circuit riders and small farmers in the Kanawha Valley, is informing: "In our scouting expeditions we found little farms in secluded nooks among the mountains, where grown men assured us that they had never before seen the American flag, and whole families had never been further from home than a church and country store a few miles away. From these mountain people several regiments of Union troops were recruited in West Virginia, two of them being organized in rear of my own lines, and becoming part of the garrison of the district in the following season."[31]

The results are adequately told in these facts: West Virginia, including the Eastern Panhandle which was largely slaveholding, sent between eight and nine thousand soldiers to fight for the Southern Confederacy and more than three times as many to fight for the Union.

Considering the large number of native-born delegates, the convention activities of the nonnatives were remarkable. As determined by indexed citations in the *Journal*, Van Winkle of Wood County, who had been a resident long enough to be acclimated, had the floor more than twice as many times as any other delegate. Other active nonnative leaders, as determined by the same source, were Daniel Lamb and Gordon Battelle of Ohio County, William E. Stevenson of Wood County, and Abraham D. Soper of Tyler County. Some of the nonnative delegates, notably Joseph Hubbs of Pleasants County and Benjamin F. Stewart of Wirt County, did not make a single important motion and took little part in the debates.

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[31] Jacob D. Cox, *Military Reminiscences of the Civil War*, Vol. I, (New York, 1900), p. 85.

The Convention organized by electing as president John Hall of Mason County, who was succeeded in the recalled session by Abraham D. Soper of Tyler County.[32] Ellery R. Hall of Taylor County, was secretary and kept the official *Journal*, which was printed in book form but did not include the proceedings of the recalled session (February 12-20, 1863). Other officers were sergeant-at-arms, James C. Orr of Ohio County, who was succeeded in the recalled session by Henry Startzman of Preston County. On motion of Waitman T. Willey, the clergy of Wheeling and the Convention were requested to open the daily sessions with prayer, which they did. The rules of the Second Wheeling Convention governed the proceedings of this Convention.[33]

On the first day of their session the constitution makers adopted a resolution by Van Winkle authorizing a committee of nine to report a plan of procedure.[34] On the following day this committee, through its chairman, Van Winkle, recommended the appointment of eight standing committees on the following subjects: 1. Fundamental and General Provisions; 2. County Organization; 3. Legislative Department; 4. Executive Department; 5. Judicial Department; 6. Taxation and Finance; 7. Education; 8. Schedule. This recommendation was accepted and the following persons were named as the respective chairmen of these committees: Van Winkle, Joseph S. Pomeroy, Daniel Lamb, Elbert H. Caldwell, Waitman T. Willey, James W. Paxton, Gordon Battelle, and Ephraim B. Hall.

The remainder of the first week of the session was occupied largely with consideration of general resolutions and special propositions for reporting officially and printing the convention proceedings and debates in book form. In the midst of the discussion incident thereto the question of "a Proper Boundary" was forced to the front, but present concern will be with plans and proposals for reporting the convention debates and printing them in book form.

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[32] Convention, *Journal*, pp. 5-6; Convention, *Debates*, Vol. I, pp. 9-10.

[33] For details of organization see Convention, *Journal*, pp. 6-7.

[34] *Ibid.*, pp. 6-7.

4. *THE CONVENTION DEBATES*

In the outset, and before any appropriation had been made for its expenses, the Convention authorized its standing committee on printing and expenditures to "enquire" into the "propriety" of having its debates reported and printed. In compliance with this authorization, this committee reported on December 2 in favor of publication "in book form, provided the same can be done without unreasonable cost."[35] At the same time it submitted estimates of costs: one of $1,800 for five hundred copies of one volume of five hundred pages; another of $850 for five hundred copies of one volume of two hundred fifty pages, with a charge of $60 for each additional one hundred pages. The latter estimate did not include the cost of reporting the debates. On the basis of this information the committee was authorized to have the debates reported officially and printed in book form.

For reasons not stated in the official *Journal* or elsewhere, but explainable because of the fact that the committee in charge knew that the debates were being reported by a competent stenographer and because no appropriations had been made for the convention expenses, nothing more was said about reporting and printing the debates until December 16, when Chapman J. Stuart moved that the committee be discharged from further consideration of the matter. At this time the legislature was insisting upon economy, and it had become apparent that the Convention would extend beyond the estimated time for its duration.[36] Stuart's motion was therefore approved but by a recorded vote of 23 yeas, to 16 nays, with Van Winkle, Battelle, Soper, Stevenson and other leaders voting "no."[37]

As this action has been variously explained, reasons for it, as stated in the debates, are informing. In brief, they reveal no concerted plan to conceal anything, as has been claimed. Generally delegates who were opposed to printing expressed the belief that their constituents were not interested in what took place in the Convention. A few delegates expressed the belief that their constituents would not understand, and might even misunderstand, the printed debates. To all such the cost of printing was therefore a useless and foolish expenditure of public funds.[38] Moreover, it was generally understood among the delegates that the existing constitution would be changed as little as possible.

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[35] *Ibid.*, pp. 20-22; Convention, *Debates*, Vol. I, pp. 66-68.

[36] Convention, *Debates*, Vol. I, pp. 641-646, 674-682.

[37] Convention, *Journal*, p. 47; Convention, *Debates*, Vol. I, p. 682.

Opposition to printing was summarized by Thomas W. Harrison of Harrison County, brother-in-law of Governor Pierpont, whose arguments centered about costs. On this point he called attention to the undetermined expenditures incident to launching the proposed new state; to the fact that counties within its bounds were then so devastated by war as to reduce their inhabitants to want; to the heavy direct taxes then being collected or proposed for both state and federal purposes; to the necessity of the new state assuming a part of the existing state bonded debt; and to the fact that their constituents expected a short and inexpensive session.[39] In support of these points Stuart affirmed that the failure to print the debates of the Constitutional Convention of 1850-51 had inconvenienced no one and been generally approved.[40]

Those favorable to printing argued that the debates would be informing to their constituents, especially to those residing in counties not included in the Dismemberment Ordinance; that they would be an indispensable guide to those who in the admitted near future would be commissioned to make a new constitution; that such publications were customary and due unborn generations; and that the failure to print the debates of the Constitutional Convention of 1850-51 was unintentional and due to the financial failure of the printer engaged for that commendable purpose.[41]

The matter did not come up again until after West Virginia had been conditionally admitted to statehood and near the end of the recalled session of the Convention. Van Winkle then indicated that stenographic notes of the debates of each session had been kept and moved that they be transcribed and published.[42] In speaking to this motion Stuart of Doddridge, claimed that the printed *Journal* was a sufficient record, but others expressed the belief that they had done something worth-while and of abiding interest to West Virginia and to the country at large.[43] That part of the motion authorizing the transcribing was therefore approved without a dissenting vote.[44] As the convention's funds were already pre-empted, that part of the motion to authorize publication was rejected, but delegates expressed the belief that they would be printed by the legislature of the new State.

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[38] Convention, *Debates*, Vol. I, pp. 674-682.
[39] *Ibid.*, Vol. I, p. 680.
[40] *Ibid.*, Vol. I, pp. 643-644.
[41] *Ibid.*, Vol. I, pp. 78-80, 674-677, 679, 681.
[42] *Ibid.*, Vol. III, pp. 738-739.
[43] *Ibid.*, Vol. III, pp. 739-746.
[44] *Ibid.*, Vol. III, p. 746.

Failure of the commissioners to provide for transcribing and publishing these debates has been adversely criticized and variously explained. For example, one historian quoting another explains it in these words: "The discussion had revealed so plainly the opposition of the people of West Virginia both to the North and the new State that the publication of the debates might interfere with the admission of the State."[45] Authentic records indicate however that the failure was due to a shortage of funds rather than to a concerted desire to conceal anything that had been said. If reference was to the President and the Congress in the quotation of this paragraph, attention is called to the fact that each had approved the West Virginia Statehood Bill before the proposal to print the convention proceedings and debates was given serious and final consideration.

The unofficial stenographer of the Convention explained the failure to print in these words: "In the hurry-scurry of the members to get away . . . no provision was made for financing the work entrusted to the Commissioners by the Van Winkle resolution."[46] Even more to the point was an explanation by Van Winkle who attributed the failure of the regular session to print, "to the uncertainty we were then placed in as to what funds would be accorded us, and the several monitions of economy we were daily receiving from the General Assembly."[47] Only $7,000 were available for the uses of the recalled session.[48]

Fortunately, the convention's authorization for transcribing its debates, together with other possibilities of the situation, especially the expectation that they would in time be printed, was sufficiently assuring to Granville Davisson Hall (September 17, 1837-June 24, 1934), the unofficial stenographer, to cause him to preserve his notes. These notes, together with six copies of each and every document printed for the uses of the Convention (gifts from John Frew, foreman of the Wheeling Intelligencer Printing Shop) were carefully secreted in a trunk which was stored for safekeeping.

Except when they were being used in writing accounts of various phases of the dismemberment of Virginia and the formation and admission of West Virginia to separate statehood, Hall's notes reposed undisturbed where he left them for forty-four years.[49] Meanwhile, Hall had been the first clerk of the West Virginia House of Delegates and from March 4, 1865, to March 3, 1867, was secretary of state. From 1867 to 1873 he was associated with William P. Hubbard as joint owner and editor of the Wheeling *Daily Intelligencer*. In 1874 he moved to Pittsburgh and in 1881 to Chicago, in a suburb (Glencoe) of which he resided until his death in 1934 as he was approaching his ninety-eighth birthday.[50]

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[45] J. G. Randall, *Civil War and Reconstruction*, p. 335, quoting McGregor, *Disruption of Virginia*, p. ix.

[46] Granville D. Hall, *Papers*, in West Virginia University Library.

[47] Convention, *Debates*, Vol. III, p. 738.

[48] *Ibid.*, Vol. III, p. 847.

Although Hall's love for his native state was abundantly attested in his writings, they are not nearly so expressive of that sentiment as is a story related to the present writer by Hall's widow. This story is to the effect that in his declining years Mr. Hall would steal away from home and go to the near-by railroad passenger station, where he, with tears in his eyes, begged the agent to sell him a ticket to Wheeling, West Virginia. When, on the secret advice of his family, this request was refused, he would continue to beg, saying: "I want to go home. My home is in Wheeling, West Virginia."

It was because of loyalty of this kind, rather than because of a desire for material gain, that Hall thought of his notes and the accompanying documents in 1906, when he learned that Virginia had sued West Virginia to force her to pay an arbitrary allotment of the state debt of the former, as of January 1, 1861. Accordingly, he wrote the Governor of West Virginia, telling him that he had preserved stenographic notes of the proceedings and debates of the First Constitutional Convention. At the same time he offered to transcribe his notes into longhand, provided he could be compensated for the necessary labor for such an undertaking.[51]

This disclosure was a find to the Governor and the State Historian and Archivist, Virgil A. Lewis, then actively engaged in assembling data to be used in presenting West Virginia's side in her famous debt controversy. Accordingly, the Governor authorized Hall to proceed with the work of transcribing, which was completed in the winter of 1906-1907, when his manuscript was sent to Charleston.[52]

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[49] Hall, *Papers*.

[50] He died at Glencoe, Illinois. See *New York Times*, June 26, 1934.

[51] Hall, *Papers*.

[52] From a miscellaneous item approved in 1907, Granville D. Hall was on March 27, 1907, paid $2,500 for transcribing the proceedings of the First Constitutional Convention of West Virginia. West Virginia Legislature, *Session Acts* (1907), p. 557.

Because of his public service in this matter, additional facts regarding Hall's ability to render it are pertinent. When he was about seventeen years old, he became interested in Isaac Pitman's[53] "Phonography," or "Sound-hand," which used sounds instead of letters to reproduce words. For some years there had been in the Hall home a copy of Elias Longley's *Phonetic Advocate,*[54] the contents of which had stimulated his natural bent for such things and interested him in Pitman's Phonetic theory which filled him with admiration and wonder. As a consequence he mastered the new system which he believed would "ultimately rid us of our barbaric English orthography." The young enthusiast found satisfaction also in the fact that he and the Pitman System were born in the same year and that the father of the latter, as a recognition of "his great services to stenography, and the immense utility of that art," had been knighted by Queen Victoria who began her reign in "that same fateful year, 1837."

Buoyant with expectation Hall set out from his home in February, 1857, to find employment in Washington, D. C., as a shorthand reporter. Though self-taught, he had confidence which was strengthened by the fact that he had money in his pocket, the savings of a term as a country school teacher in Harrison County, (West) Virginia. Thus fortified, he reached Washington three days before James Buchanan was inaugurated President of the United States and witnessed that ceremony.

After spending a few days familiarizing himself with the Capitol and other public buildings, Hall visited the House of Representatives, where he sent letters of introduction to John S. Carlile, representative of his district in Congress. Carlile received him graciously and introduced him to Richard Sutton[55] who employed him as a member of his corps of reporters serving Congress. In the course of his services with Sutton, Hall became personally acquainted with many persons prominent in public life, but of all these William H. Seward impressed him most.[56]

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[53] For biographical sketch of Isaac Pitman see *Dictionary of National Biography,* Supplement, Vol. III (New York, 1901), pp. 266-268.

[54] Elias Longley (August 29, 1823-January 12, 1899) was born in Ohio, and after spending his early life on his father's farm, became interested in printing. In 1845 he began the study of phonography and the next year was a student under J. S. Dixson, at Cincinnati, where he made his home until April, 1885, when he moved to Los Angeles, California. He was author of a spelling reform publication and organized the first phonographic association in America. In 1848 he began a correspondence with Isaac Pitman who encouraged him in his work in phonography and spelling reform. He was a reporter for Cincinnati newspapers in the War of Secession and for years was an active court reporter in that city. He was the author of numerous shorthand books in which the Pitman system was presented with a number of modifications. *The Phonographic Magazine,* Vol. XIII (Cincinnati, 1899), p. 27, and *Browne's Phonographic Monthly,* Vol. XI (New York, 1886), pp. 314-315.

[55] Richard Sutton (1807?-July 14, 1878) was born in England and about 1837 emigrated to Canada. Soon thereafter he went to Albany, New York, where he was employed by Thurlow Weed on the *Evening Journal.* In 1840 he began to report for the *Globe* (Washington, D. C.), but at the end of

Because of the opportunity it gave to make helpful acquaintances and keep in touch with "the great wide world which then centered at the National Capitol," Hall liked his work in Washington, but the pay was small and the long vacations were discouraging. He would, however, have returned for the Congressional session of 1859-60, but for an attack of typhoid fever, which incapacitated him for months.

In his enforced idleness Hall drifted into politics and was named a presidential elector on the Lincoln-Hamlin ticket. This attachment, together with his ability to take accurate stenographic notes, commended him to Archibald W. Campbell, founder of the Republican party in West Virginia and associate editor of the Wheeling *Daily Intelligencer,* who in midwinter of 1860-61 employed Hall as a reporter. He did a fine job of reporting the proceedings and debates of the Wheeling conventions of 1861 and, as the employee of the *Daily Intelligencer,* was available and able to record the proceedings and debates of the First Constitutional Convention of West Virginia.

Hall retained interest in the Pitman System to his last days. One of the happiest days of his life was that on which he in 1868, at Grafton, West Virginia, met Benjamin ("Benn") Pitman,[57] Isaac Pitman's brother, who after helping his other brothers, Joseph, Henry, and Frederick, establish the Pitman System in England, came to America in 1852 for the purpose of publicizing it here. Meanwhile another brother, Jacob Pitman, had introduced the system in Australia, and before the last century ended, it had been adapted to the important languages of Europe and Asia. It was then in general use in the United States, and is the basis of more modern systems now used here and elsewhere.

Martin Van Buren's administration, he joined the staff of the *New York Tribune.* Eight years later he took official charge of the Congressional reports for the *National Intelligencer* (Washington, D. C.). After it relinquished its contract for reporting the debates and proceedings of the United States Senate, Sutton joined the reportorial staff of the *Globe,* a position which he held until March 3, 1869, when he resigned. *Washington Post,* July 16, 1878; *Evening Star* (Washington, D. C.), July 15, 1878; and Charles Currier Beale, "Congressional Reports and Reporting," in National Shorthand Reporter's Association, *Proceedings,* Vol. X (1908), pp. 72-75.

[56] Hall, *Papers.*

[57] *Dictionary of American Biography,* Vol. XIV (New York, 1934), pp. 641-642.

5. *THE BOUNDARY*

After a week devoted to preliminaries the Convention on December 4 took up the report of its committee on "a Proper Boundary" which was given priority over other reports[58] and chief attention for the ensuing nine days. From the outset of the deliberations there had been a compelling urge to extend the bounds of the proposed State. This was contemplated in the Dismemberment Ordinance, and it was indicated by the presence among the convention members of delegates from counties not included in the proposed State. Before laying the fundamental law, it was deemed necessary therefore to determine the bounds of the proposed State.

Incidentally and perhaps significantly the name "Kanawha" was changed to "West Virginia." Partly because of sectional differences delegates from the northern counties objected to Kanawha, but a more general objection was found in the fact that one of the largest counties and the largest river in the proposed State bore that name. Allegheny, Augusta, and Western Virginia were suggested as preferable, but after some discussion West Virginia was selected. As stated by one of the delegates, "It is a familiar name," but more to the point was the assertion, "It is a name to speak."[59]

Under the chairmanship of Chapman J. Stuart and in compliance with the Dismemberment Ordinance, the committee on "a Proper Boundary" recommended the inclusion of four groups of counties.[60] They aggregated thirty-one in all and embraced the remaining Virginia counties in the trans-Allegheny, the entire Shenandoah Valley, and a shoestring area paralleling the Potomac River eastward to and including Jefferson County, and the east side of Allegheny Front between Middle Ridge through its entire length and almost to Kentucky. These groups did not, however, include counties embraced unconditionally in the Dismemberment Ordinance.

The first group comprised Pocahontas, Greenbrier, Monroe, Mercer, McDowell, Buchanan and Wise counties which were desired to make a "compact" and "rounded out" state to embrace the entire area west of the Alleghenies.[61] After much debate Wise and Buchanan were excluded and the others of this group were annexed unconditionally but by a recorded vote of 27 for, to 15 against.[62] Those opposing this inclusion questioned both the authority and the ethical right of the Convention to act in the matter.[63] On this point it will be recalled that none of these counties had voted on the Dismemberment Ordinance; that not one of them was then represented in the Convention; and that the Dismemberment Ordinance had named specifically for possible annexation only Pocahontas, Greenbrier, Hardy, Hampshire, Morgan, Berkeley and Jefferson counties. Those favoring the inclusions considered their constituent powers sufficient to authorize them, and the anti-secession vote of some of the desired counties was considered a sufficient indication of their wishes in the matter.[64] Willey would have made all annexations conditional upon favorable referenda, but his motion for that purpose was rejected.

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[58] Convention, *Debates*, Vol. I, pp. 146, 197-582.

[59] *Ibid.*, Vol. I, pp. 88, 96, 100-101, 107; Convention, *Journal*, p. 25.

[60] *Ibid.*, p. 23; Convention, *Debates*, Vol. I, pp. 73-74.

[61] *Ibid.*, Vol. I, pp. 73, 197, 198-316.

Willey and others opposed to these inclusions got satisfaction from the decision regarding Wise and Buchanan counties, but others parted with them reluctantly. They, too, were west of the main ridge of the Alleghenies and would have provided an outlet for the proposed State to the Southwest in the direction of the Virginia and Tennessee Railroad and the "Union loving portion of Tennessee." Frequent mention was made of the fact that their inclusion would have created another panhandle.

With the common boundary of Craig and Alleghany counties as a dividing line the second and third groups of counties proposed for annexation embraced a narrow area extending across the state just eastward of Allegheny Front, together with Morgan, Berkeley, and Jefferson.[65] After defeating a proposal to extend the southern, or second, group comprising Craig, Giles, Bland, Tazewell, Russell, Lee, and Scott counties, eastward to the top of the Blue Ridge so as to make the proposed State comprise "Western Virginia" rather than the diminutive "Northwestern Virginia,"[66] inclusion of this group was rejected.

Because of their alleged common grievances with trans-Allegheny Virginia, their rich natural resources, and their railroads, a number of delegates led by Brown of Kanawha, urged the inclusion of all the counties of the Valley and present Southwest Virginia, but others opposed inclusion of the latter on the ground that they were socially, economically, and traditionally inseparable from

[62] *Ibid.*, Vol. I, pp. 316-317; Convention, *Journal*, p. 35.

[63] Convention, *Debates*, Vol. I, pp. 204-205, 211, 247, 272-274.

[64] *Ibid.*, Vol. I, pp. 197-316.

[65] Convention, *Journal*, p. 23; Convention, *Debates*, Vol. I, pp. 320, 413.

[66] Convention, *Debates*, Vol. I, pp. 333-336, 372, 393-395, 412-413.

eastern Virginia.[67] Relying upon the ameliorating influences of railroads and turnpikes, delegates from the Kanawha Valley were willing to defy the Alleghenies in this matter; but, when attention was called to possible effects of their inclusion on the new state debt, these counties lost their attractiveness. This change of attitude can be understood when it is recalled that Virginia had spent several million dollars on internal improvements in and about Covington, Allegheny County,[68] and that a number of the new state makers had already decided that "benefits derived" would be a just basis on which to determine their proportion of the state pre-war indebtedness.[69]

Consideration of the third group of counties, comprising Alleghany, Bath, Highland, Pendleton, Hardy, Hampshire, Morgan, Berkeley, and Jefferson, occupied the Convention for some time. Influenced mainly by arguments similar to those which had resulted in the exclusion of the second group, Alleghany, Bath, and Highland were stricken from the third group,[70] but Frederick which had been "accidentally omitted,"[71] was added. As thus constituted, the entire third group was to be a part of the proposed State, provided the "district" composed of Pendleton, Hardy, Hampshire, and Morgan counties, by a majority of the votes cast, "shall be in favor of the adoption of the Constitution" at an authorized election or at elections. Then the "district" comprising Berkeley, Jefferson, and Frederick counties might be included in the same manner at "the said election or elections."[72]

The fourth group comprising Clark, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, and Botetourt, was excluded rather summarily, but the discussion incident thereto was accompanied by suggestions ranging from the patriotically sentimental to the grandiose and the impractical. Among the former was a proposal to incorporate Fairfax County. As this county embraced the site of Mount Vernon, home of the "Father of his Country," its proposed inclusion was a slap at the seceders. It was also an effort to bring the bounds of the new State to the gates of the

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[67] *Ibid.*. Vol. I, pp. 321-327, 366-367, 412-413.

[68] *Ibid.*, Vol. I, pp. 399-401, 427-430. Granville Parker of Cabell County, estimated the state expenditures for internal improvements in and about Alleghany County at $4,300,000. Convention, *Debates*, Vol. I, pp. 399-400, 429.

[69] Convention, *Debates*, Vol. I, pp. 429-435.

[70] *Ibid.*, Vol. I, pp. 399, 434, 428-430.

[71] *Ibid.*, Vol. I, pp. 333-336, 413, 458.

[72] *Ibid.*, Vol. I, pp. 458, 522, 528, 545-546; West Virginia, *Code* (1868), p. 20.

Federal Capitol with possible advantages to the Union and the proposed State as well. But for the desire to retain "a kind of Union nucleus" for the Virginia Reorganized Government after its contemplated removal from Wheeling, the bounds of West Virginia might have extended east of the Blue Ridge Mountains. Proposals were made for the inclusion of all the counties along the Potomac River, together with those on the Eastern Shore.[73]

As finally determined the proposed State comprised forty-four counties, and provision was made for the inclusion of seven others, which raised a number of questions. First among these was that of a proper basis of representation for both Congressional and state legislative purposes. Would it be white population, total population, federal numbers, etc.?[74] Possible answers brought into the forefront a half century conflict between eastern and western Virginia. As much as anything else, they were responsible for the committee on "a Proper Boundary." Questions raised by it explain why the Convention did not include the present Eastern Panhandle of West Virginia unconditionally, as it had included Pocahontas, Greenbrier, Monroe, Mercer, and McDowell counties.

The conditional inclusion of heavily slaveholding areas raised still other questions. As already indicated, there were in the proposed State a number of influential leaders who wished to have a free state, and, as was well understood, ultimate admission could be had only by Congressional approval. Those who reckoned with the exigencies thus raised called attention to the fact that the proposed State of Kanawha contained about seven thousand slaves, whereas the enlarged and potentially enlarged West Virginia, including Frederick County, contained more than twenty-two thousand.[75] To Charles Sumner, Thaddeus Stevens, and others similarly minded, this meant another slave state, with all that that implied. That was why Sumner saw "a nigger in the wood pile" and opposed the admission of West Virginia.

With local antislavery leaders inclusion of additional slave territory was objectionable but under the circumstances, permissible. Abolition being conceded in the near future, the desire for natural resources, transportation facilities, and defense of the Federal Capital was so urgent that those opposed to a slave state, even ministers of the gospel, went along. Of the latter, Gordon Battelle alone protested by formal resolution, but contrary to statements heretofore made by a number of writers, he was denied the floor of the Convention for the purpose of expressing his views at length.[76] He was thus forced to appeal to the people, which he did in a lengthy address. Except for scattering volunteers who at the time of the referendum on the constitution, protested against a slave state, the voice of Battelle was, however, "as one crying in the wilderness." His ultimate victory through the intervention of Congress, changed the whole aspect of the new state movement. Henceforth many persons erroneously regarded it as an Abolitionist affair from its inception.

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[73] Convention, *Debates*, Vol. I, pp. 546, 548-550.

[74] *Ibid.*, Vol. I, pp. 74-76, 442-444, 449, 455, 460.

[75] *Ibid.*, Vol. I, pp. 440-445; Ambler, *Francis H. Pierpont*, pp. 402-403; *Federal Census* (1860 Population), pp. 504-513, 516-522.

Problems raised by the proposed territorial extension along the Potomac were quite practical. At this stage of the new state movement and the war then waging, a chief concern was for the defense of the Federal Capital. Moreover, the new state makers were looking forward to normal times, when it would be to their advantage to have an outlet to the East unobstructed by adverse legislation. Assertions by east Virginians, notably those by Henry A. Wise deploring the alleged Abolitionist influences of the Baltimore and Ohio Railroad, were not assuring. Provision was therefore made for including in the new state all Virginia territory traversed by that coveted and maligned thoroughfare which, according to Van Winkle, had cost Virginia, "not one dollar."[77]

At first the Kanawha Valley was reluctant to abandon its desire for an outlet by way of Covington and hesitated to go along with plans to include every foot of the territory traversed by the Baltimore and Ohio Railroad,[78] but when assured by Van Winkle, a successful railroad promoter and lobbyist, of an available and practicable outlet by a railroad connection at Grafton, its delegates were more agreeable. Van Winkle's success in connecting Parkersburg and Grafton by rail was assuring, as was also the fact that the most popular railroad projects affecting northwest Virginia had for a long time been proposed north and south lines between Pittsburgh, Pennsylvania, and Charleston, (West) Virginia. Moreover, Cincinnati, accessible by steamboat, was then the commercial outlet of the Kanawha Valley.

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[76] Convention, *Debates*, Vol. I, pp. 604-605; Vol. II, pp. 971-972, 1149-1150; Convention, *Journal*, pp. 44, 117, 123, 128. For text of Battelle's address see Granville D. Hall, *The Rending of Virginia* (Chicago, 1902), pp. 440-456. Granville Parker in his, *The Formation of the State of West Virginia* (Wellsburg, W. Va., 1875), pp. 77-78, discredits Battelle's manner of handling this question.

[77] Convention, *Debates*, Vol. I, pp. 416-418, 428, 438-444, 447, 451, 471-475, 499, 503; Vol. II, pp. 993.

[78] *Ibid.*, Vol. I, pp. 354-355, 426, 438, 451-456, 498-503.

6. RE-LAYING THE FUNDAMENTAL LAW

(1) THE LEGISLATIVE DEPARTMENT

The boundary of the new State having been determined, the Convention on December 17 turned to consideration of the legislative department. With incidental attention to general provisions such as a bill of rights, it was thus occupied until December 20, when it recessed until January 7, 1862. The extended vacation was opposed by a number of delegates. Those residing in and about the Kanawha Valley, who went home, used most of it for travel.[79]

By a vote of 21 for, to 17 against the Convention had meanwhile approved a motion to exclude the words "any minister or priest of a religious denomination" from a clause in the proposed constitution restricting membership in the legislature.[80] The pro and con arguments indicate that the action was a compliment to the Christian ministry. In keeping with Thomas Jefferson's ideas regarding the complete separation of state and church, the objectionable provisions were a part of the existing constitution. Without exception the ministers of the Convention voted for exclusion and accused delegates favorable to the proposal of "hankering after the fleshpots of Egypt," a favorite reference to those of pro-Virginia leanings.[81]

Following the holiday recess the Convention devoted the ensuing nine days almost entirely to the legislative department. In fact, this phase of its work was almost as difficult and important as was the determination of a "Proper Boundary." Now that they had an opportunity all their own, delegates desired to attain the long sought goal of equal representation for equal numbers of white persons in both branches of the legislature, but inequalities in county populations presented difficulties which were complicated by rivalries between loyal areas and areas "dominated by the spirit of rebellion."[82] Moreover, the boundary of the new state had not yet been definitely determined.

As finally determined, the legislative power was vested in a senate and a house of delegates, which were jointly called "the Legislature of West Virginia." The senate was to consist of 18 members, two each from nine districts as nearly equal as practicable in population, and the house was to be made up of 47 delegates apportioned among districts and counties on the same principle as for the senate. In the event that Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson, and Frederick counties were included, the number of senators was to be increased to 22 and the delegates to 57.

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[79] *Ibid.*, Vol. I, pp. 648-658.

[80] *Ibid.*, Vol. I, p. 816; Convention, *Journal*, p. 66.

[81] Convention, *Debates*, Vol. I, pp. 804-816.

[82] *Ibid.*, Vol. II, pp. 1-438.

Other provisions respecting the legislative department reflect a penchant for the practical, as well as for the theoretical. One-half of the senators, together with all the delegates, were elected annually; sessions were limited to forty-five days duration, unless extended by a three-fourth's vote of all the members elected to each house; both senators and delegates were allowed $3.00 per diem while the legislature was in session, and ten cents mileage for each mile traveled in going to and from sessions by "the most direct route." The president of the senate and the speaker of the house were each allowed $2.00 a day extra.

The chief difference between the legislative department of the new State and that of Virginia was the provision restricting the former to the enactment of general laws and shortening its regular session from ninety to forty-five days. The legislature of the new State met annually, and the basis of representation for each house adhered to the principle of equality for equal numbers of white persons. In the existing legislature the "mixed basis" was used to determine the membership of the upper house and a modified white basis was used for the lower house. In the new State ministers of the gospel and priests were eligible to membership in either branch of the legislature.

Other differences were in the names and sources of authority of presiding officers. In the proposed State each house of the legislature elected its own presiding officer who, in case of a vacancy in the governorship, succeeded to that office, the president of the senate first, whereas in Virginia a lieutenant governor, elected by popular vote, presided over the senate and succeeded to the governorship, in case of vacancy. As in the new State, the house of delegates elected its speaker.

(2) COUNTY GOVERNMENT

The most important feature of the new state constitution was the abolition of the county courts. Whatever merits these courts may have had under the old system as judicial tribunals, it was believed that the establishment of circuit courts under the new system made them no longer necessary. Besides, their inefficiency in the administration of county affairs had long been condemned by experience, and they did not adhere to the desires of the new state makers for a separation of powers with respect to legislative, judicial, and executive functions.

To provide for a just and efficient administration of the fiscal and other affairs of the counties they were subdivided into not less than three or more than ten townships, in each of which the voters were to determine their own affairs, such as schools and roads, in township meetings not unlike the New England town meetings of that time. In short, an effort was made to apply the Montesquieu maxim that the people in a democracy "ought to do for themselves whatever they conveniently can," subject only to such regulations as their general legislature may prescribe.[83]

Under the same regulation the more general affairs of the counties were entrusted to a board of supervisors composed of one supervisor from each township, elected annually in the township meeting. These supervisors were required to meet at their respective court houses at least four times each year. Their duties embraced, "the superintendence and administration of the internal affairs and fiscal concerns of their County, including the establishment and regulation of roads, public landings, ferries, and mills; the granting of ordinary and other licenses; and the laying, collecting, and disbursement of the county levies." They had authority also to determine the location and number of voting places and, with the aid of county recorders, they had charge of all matters pertaining to probating wills, recording vital statistics, and preserving deeds and wills.

Under the new system justices of the peace were continued as conservators of the peace and as arbiters in petty judicial matters, both criminal and civil. For these purposes each township meeting, at intervals of four years, elected one justice and, when the population of any township excessed 1,200, it might elect an additional one. To supply the place of justices of the peace in the former judicial system the number of terms of the circuit courts was increased and the jurisdiction of the justices was extended. They had jurisdiction in misdemeanor and breach of peace cases punishable by fines not in excess of $10.00 or by imprisonment not to exceed thirty days, and in civil cases, where the value in controversy did not exceed $100.00, exclusive of interest. But in all civil cases where the value in controversy exceeded $20.00, and in all misdemeanor and breach of the peace cases where the fine exceeded $5.00 or a prison sentence was imposed, either party to the civil suit and the defendant in the misdemeanor or breach of peace case might request a trial by a jury of six persons.

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83. *Ibid.*, Vol. I, pp. 752-760; Vol. II, pp. 438-568, 648-680.

In the light of the former eagerness of the northwest for new counties, the provisions of the new state constitution governing that subject were surprising. Under them no new county might be formed with an area of less than four hundred square miles and with a population less than four thousand and not then if, in the process, the area or population of any adjoining county were reduced below those numbers. At that the new state constitution was more liberal on this subject than was that of Virginia, which forbade the formation of new counties of less than six hundred square miles area, but the Virginia General Assembly might divide existing counties whose length exceeded fifty miles.

(3) THE JUDICIARY

In the absence of Waitman T. Willey on leave to discharge his duties in the United States Senate, James H. Brown of Kanawha County, ranking member, presented the report of the committee on the judiciary. As the Virginia judiciary was then generally conceded to be "second to none in this country,"[84] the existing system was accepted with only a few changes. This was in spite of the fact that more recorded votes were taken in the course of the ensuing debate than on any other subject discussed in the Convention. These votes were largely the products of legal quibblings which had to do with the number of circuits and judges, terms of service, salaries, and the like.

As finally determined, judicial power in the new State was vested in a supreme court of appeals of three judges, elected by the voters for twelve-year terms with a salary of $2,000 each; nine circuit judges elected by the voters of their respective circuits for six-year terms, with a salary of $1,800 each; and inferior tribunals. Provision was made for increasing the number of circuits and judges from time to time to accommodate expected growths in population and expected inclusion of additional counties.

The Supreme Court of Appeals had original and concurrent jurisdiction in cases of *habeas corpus*, *mandamus*, and *prohibition*, but its jurisdiction was otherwise appellate. The circuit courts had jurisdiction in "all matters at law, where the amount in controversy exclusive of interest exceeds twenty dollars, and of all cases in equity, and of all crimes and misdemeanors." Unlike their successors in West Virginia and the functioning judges in Virginia, circuit judges in the new State were to have "supervision and control of all proceedings before Justices and other inferior tribunals."

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[84] *Ibid.*, Vol. I, pp. 817-820; Vol. II, pp. 794, 812, 756-987; Convention *Journal*, pp. 67-70, 107-118.

(4) EDUCATION

As the existing constitution did not mention education and free schools, except in a brief provision of twenty-four words on the uses of capitation taxes, the five hundred words given to these subjects in the new state constitution were significant, as was also the fact that more delegates later claimed paternity for the public school system which it authorized than for any other of its provisions. The quarter century failure of the northwest to get schools was in fact one of its greatest presecession grievances. Educational conventions had kept interest alive and, under the act of 1846 authorizing the establishment of district free schools, they had been established in Kanawha, Jefferson, and Ohio counties and approved by majority votes in elections in Brooke, Marshall, Mason, Wood, and perhaps other counties.[85]

More important still, the differences between eastern and western Virginia over the uses of the income of the Literary Fund had so embittered the northwest as to make it hostile to higher education, particularly to the University of Virginia. In the allocation of this income the east succeeded in diverting a $15,000 annuity to the University and in appropriating $180,000 for its initial building program, but the northwest had insisted that the entire income should be used for the education of poor children and to provide the beginnings of a free public school system for all children of school age.

From the outset the committee on education, under the chairmanship of Gordon Battelle, a college graduate, was eager and resourceful; but others, even nonmembers of the Convention, had a part in determining its recommendations. Early in the regular session attention was called to a communication in the Wheeling *Daily Intelligencer* for December 13, 1861, from "Professor Martin" of Allegheny College, Meadville, Pennsylvania, later Dr. Alexander Martin, first president of West Virginia University, upon the subject of "Education and Free Schools."[86] Before the Convention met, Battelle had assembled a number of school laws and bulletins of neighboring states,[87] and early in its session the Convention accepted an invitation from "the Commissioners, Trustees, and Principal of the Fifth Ward Public School of the city of Wheeling" to visit it.[88] About the same time papers on "Education and Free Schools" were presented by a number of delegates, notably by William E. Stevenson of Wood County, and Granville Parker of Cabell County.[89]

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[85] Virginia, *Governor's Message and Annual Reports* (1850, 1851, and 1852), Doc. No. 4; County School Records in West Virginia University Library. The first free public schools in present West Virginia were in Monroe County. They were district schools established in 1829 under an act of that year, and were active for only a few years. *House Journal* (1829-30) William A. Maddox, *Free School Idea in Virginia before the Civil War* (New York, 1918), p. 100; Monroe County School Records in Monroe County Court House.

[86] Convention, *Journal*, p. 42; Convention, *Debates*, Vol. I, p. 548.

The essence of the constitutional provisions on education was the clause which required the legislature to provide "as soon as practicable, for the establishment of a thorough and efficient system of free schools." This was to be financed by interest from the invested "School Funds," by "general taxes on persons and property, or otherwise," by township levies, and by the net proceeds of all forfeitures, confiscations, and fines. As familiar as these sources of public revenue now are, they were originally determined as the result of much study and a prolonged debate which at times became bitter and personal. In the course of this debate those interested in internal improvements were accused of a willingness to sacrifice the welfare of their children. Despite the fact that the delegates were in greater accord on the need for education than on any other subject, conflicting sectional interests cast an ominous shadow over convention proceedings.

Dominated by Battelle and his minister associates the committee on education wished, so far as possible, to finance the proposed educational system by indirect taxes. For this purpose the committee planned to get a large part of the necessary funds from a tax on the revenues of corporations, but Brown of Kanawha, and Van Winkle of Wood, objected. Acting on the principle that "a half loaf is better than none" Battelle modified the committee proposal so as to make the proposed tax applicable only to "corporations hereafter chartered."[90] This concession saved his proposal by a vote of 25 against striking out, to 19 for.[91] At that it was an empty victory, for the revenues thus made possible were for the "School Fund," only the interest from which was available for current uses. The burden of the new system fell therefore almost entirely upon direct tax payers.

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[87] Convention, *Debates*, Vol. I, pp. 69-72; Vol. III, pp. 456-460; Convention, *Journal*, p. 22.

[88] *Ibid.*, p. 27; Convention, *Debates*, Vol. I, pp. 144-145.

[89] *Ibid.*, Vol. I, pp. 71-73; Convention, *Journal*, p. 22.

[90] *Ibid.*, p. 118-119; Convention, *Debates*, Vol. II, pp. 988, 990-1018, 1056.

[91] Convention, *Debates*, Vol. II, p. 1079; Convention, *Journal*, pp. 119-120.

Something of the needs for education, as well as the character of the arguments for it, may be gathered from the following paraphrase of remarks by delegate Hagar of Boone County: One of the greatest benefits from the new state will be a free public school system. "My notion is that the common people are the backbone of the nation" and that "education might be termed the sinews." There was a large quantity of native ability or mother wit in his county, but, in the almost complete absence of schools, it had remained uncultivated. He had seen entire family circles of intelligent boys and girls fourteen to fifteen years old, none of whom knew the alphabet. Their parents could not teach them because they were equally ignorant.[92]

The system authorized to remedy this situation was based upon the act of 1846, which permitted the several counties to establish district free schools. As in that act, the local taxing units of the new system were to be townships or districts. The legislature was also authorized to provide for a "General Superintendent" and superintendents for each county. The second auditor, who since 1823 had been superintendent of the Literary Fund, was the forerunner of the former, whereas the county superintendents installed under the act of 1846, served as a precedent for the latter.[93] Although nothing was said about a state university or other state maintained institutions of higher learning, authority to create them was conveyed in that provision of the constitution which authorized the legislature to "foster and encourage moral, intellectual, scientific and agricultural improvement."

(5) TAXATION AND FINANCE

After the Convention had been in session about two months, including the Christmas holidays, and was brought face to face with its most difficult problems, those dealing with taxation and finance, delegates began to talk about a recess, while others favored a *sine die* adjournment. To test sentiment on these proposals, as well as to spare the Pierpont exchequer and to force the issue, Caldwell of Marshall County, moved to reduce the per diem from $4.00 to $3.00, which motion, after being amended so as to apply only to delegates residing within one hundred and fifty miles of

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[92] Convention, *Debates*, Vol. II, p. 1032.

[93] *Session Acts* (1845-56), pp. 32-36; Virginia, *Governor's Message and Annual Reports* (1850 and 1851), Doc. No. 4.

Wheeling, was rejected.[94] An effort to commit the members of the Convention to continue in attendance without compensation after the expiration of the sixty-five days previously agreed upon for the completion of their work, had meantime been rejected by a vote of 18 for, to 22 against.[95] Those favoring it were persistent, however, and aided by the obvious and admitted need for dispatch, they on January 29, 1862, succeeded in limiting debate to two speeches on any one subject for each delegate, the first not to exceed ten minutes duration and the second five minutes.[96] The president of the Convention was authorized to enforce these rules, but a motion to lengthen the daily sessions was rejected.

Under the wholesome effects of these rules the Convention on January 31 took up the report of the committee on taxation and finance, which was made "the order of the day until disposed of." After deciding to make taxation "equal and uniform" and to tax "all property, both real and personal . . . in proportion to its value," a serious difference of opinion developed over a proposal copied from the existing constitution, to give the legislature power to tax incomes, salaries, and licenses, provided property from which such taxes were derived was not taxed. The ensuing discussion disclosed many features of the proposed taxes, but they could not be differentiated from ordinary license taxes then in general use. It was argued moreover that they might become a burden to wage earners. The proposal was therefore rejected but by a widely distributed vote of 21 for, to 27 against.[97]

At this stage of its proceedings the Convention found its progress blocked by "the state debt." Most delegates were eager to determine and assume that portion of the existing bonded indebtedness justly belonging to the proposed State, but no two of them agreed on the amount of the debt.[98] Estimates varied all the way from a possible asset, provided it were determined on the basis of "benefits derived," to a liability ranging from one to fifteen million dollars, provided it were determined on the basis of territory and population.

The possibilities of this situation complicated proposals for internal improvements to be financed by the State. As the new state movement was in part a result of neglect in these matters, certainly in the Kanawha Valley, separate statehood was looked upon as implying, as a matter of course, a redress of grievances.[99] As it was planned to finance a free public school system in any event, those who had fairly adequate internal improvements favored keeping state expenditures at a minimum, certainly until the size of the state debt could be determined. With this in mind Van Winkle indicated that private capital was available to build a railroad between Grafton and the Kanawha Valley, but most of the delegates from that section were not satisfied with the prospects. Instead, they insisted that the way to make a great state, as determined by the experiences of New York and Ohio, was to finance needed internal improvements through bonded indebtedness.[100] In one of the most significant votes of the Convention a proposal to authorize a public debt for this purpose was defeated on February 1, 1862, by a sectional vote of 23 for, to 25 against.[101]

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[94] Convention, *Journal*, pp. 115-116; Convention, *Debates*, Vol. II, p. 953, 968.

[95] *Ibid.*, Vol. II, pp. 961, 965; Convention, *Journal*, pp. 115-116.

[96] *Ibid.*, p. 123; Convention, *Debates*, Vol. II, pp. 1149-1150.

[97] Convention, *Journal*, p. 131; Convention, *Debates*, Vol. III, p. 116.

[98] Convention, *Debates*, Vol. II, p. 1019; Vol. III, pp. 132, 144, 149, 152, 157-186.

Chapman J. Stuart claimed that this vote was "the most fatal stab that has been yet given to the prospects of our new state."[102] More than anything else it forced a sectional alignment not unlike that out of which West Virginia was born. The results still linger and until recently were determining in important matters. As a way out of their dilemma delegates from the Kanawha Valley would have given the legislature power to lend the state credit to corporations and persons interested in internal improvements.[103] It was proposed also that after five years the State might borrow a sum of money, not to exceed $4,000,000 at any time, to be used for internal improvements,[104] but this proposal was defeated by a sectional vote which intensified sectional grievances. A proposal to build a railroad between Pennsylvania and Kentucky by way of Morgantown and Charleston at a total cost to the state of $10,000,000, was resented by delegates from the Kanawha Valley as insincere and ridiculous.[105] For some time thereafter much was said about the threatened revolt of that section.[106] More than anything else this explains the insistence of its delegates upon its full representation in the Convention.

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[99] *Ibid.*, Vol. III, pp. 157-168.

[100] *Ibid.*, Vol. III, pp. 149-150, 163-164, 190, 195, 288.

[101] *Ibid.*, Vol. III, p. 186; Convention, *Journal*, p. 133.

[102] Convention, *Debates*, Vol. III, p. 188.

[103] *Ibid.*, Vol. III, pp. 189, 197, 199, 231, 237; Convention, *Journal*, pp. 132-135.

[104] *Ibid.*, pp. 134-135; Convention, *Debates*, Vol. III, p. 247.

[105] *Ibid.*, Vol. III, pp. 258, 273.

[106] *Ibid.*, Vol. III, pp. 202, 254-276.

Other provisions of the new state constitution were scarcely more acceptable to those who insisted that internal improvements were almost as essential to progress as was education. For instance, no county, township, city, town or other municipal corporations, even with the approval of their voters, could become a stockholder in any association or corporation, and the State was forbidden to lend her credit to such governmental units or to any corporation or person by assuming any of their debts, "unless incurred in time of war or insurrection for the benefit of the State."

Those who objected to these provisions found scarcely more comfort in the declared intention to assume "an equitable proportion of the public debt of the Commonwealth of Virginia," as of January 1, 1861. Though undetermined, the possible liability was already a millstone about the neck of the proposed State. Assumption was authorized only as a means to an end. In other words, it was the price which northwest Virginia was willing to pay for separate statehood. There were, however, those among the constitution makers, who thought it unnecessary at that time to require the legislature, "as soon as may be practicable," to ascertain the amount of the state indebtedness "and provide for the liquidation thereof," as was done.

As a result of these decisions a number of delegates, most of them from the Kanawha Valley, were so displeased that reconciliation was considered imperative. Accordingly, in the last days of the session, a special committee of nine, with Henry Dering of Monongalia County as chairman, was appointed to work out a compromise.[107] This committee recommended that the proposed State be permitted to subscribe to the capital stock of associations and corporations authorized for the purpose of making internal improvements, as was then done in Virginia, provided that such stocks shall be paid for "at the time of subscribing, or [the state] shall levy a tax for the ensuing year sufficient to pay such subscriptions in full."[108] This recommendation was accepted without debate, but it did not reconcile northern and southern West Virginia. That reconciliation is now just being worked out. Strange as it may seem, it is largely a product of improved roads of quite a different character from those demanded in 1862 by the Kanawha Valley.

[107] Convention, *Journal*, pp. 165-167.

[108] *Ibid.*, p. 167; Convention, *Debates*, Vol. III, p. 427.

(6) EXECUTIVE DEPARTMENT

Consideration of the executive department came during pressure for recess or adjournment and was doubtless influenced by it. This may account for the fact that the accompanying debates were restricted almost entirely to such topics as lengths of terms and salaries. Except in cases of minor officials, change from the existing method of election by the voters was not suggested. Incidentally, and it was without a recorded vote, the word "Commonwealth" was eliminated and the word "State" was inserted instead.

"Chief executive power" was vested in a governor with a two-year term, a salary of two thousand dollars, eligibility for re-election for one or more terms, and the usual executive powers of appointment and removal. A secretary of state, a treasurer, and an auditor were to be elected at the same time as the governor, for the same term and in the same manner, and were to receive salaries of $1,300, $1,400 and $1,500, respectively.

Neither the proposed attorney general nor the "General Superintendent of free schools" was mentioned under the "Executive" heading. The former was placed under the "Judiciary" and was made elective by the voters at the same time and in the same manner as the governor. This officer was to perform such duties and receive such compensations "as may be prescribed by law." The general superintendent of free schools was authorized under the heading "Education," and the manner of his election, together with his powers, duties, and compensations, was also to be determined by law.

(7) FUNDAMENTAL AND GENERAL PROVISIONS

Contrary to advice offered by delegates from northwest Virginia, notably by Alexander Campbell of Brooke County, in the Constitutional Convention of 1829-30, to the effect that adoption of a bill of rights was a necessary preliminary to its work,[109] the new state constitution makers did not adopt a bill of rights until near the end of their deliberations. Meanwhile the committee in charge was a sort of catchall for such resolutions and motions as did not readily admit of other reference. There were other evidences of the sobering influences of responsibility, but nowhere were they more evident than in the straightforward language of the bill of rights adopted. Whether significant or not, such hackneyed and confusing expressions as "all men are by nature equally free," were conspicuous by their absence.

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[109] Virginia Constitutional Convention (1829-1830), *Debates* (Richmond, 1830), p. 117.

As West Virginians in their political relations with east Virginia, had been free in their use of generalizations, their absence from their own fundamental law could not have been unintentional. Chief responsibility rests perhaps with that hardheaded and practical Dutchman, Peter G. Van Winkle, who had resided in northwest Virginia long enough to understand the homely philosophy and common sense of the middle class people, for whom he spoke and acted, and had not been asleep for the twenty years immediately preceding the attempted secession of Virginia. Of these people Van Winkle, who was not given to flattery or demagoguery, said: "I have been intimate with them in almost every relation . . . They are emphatically a thinking people. Although they may not have the acuteness of the 'yankees' yet for good sense—common sense—I will put them against any other people that I ever was acquainted with; and if the advantages of education which people have in other states had been afforded the people of western Virginia, I have not the slightest doubt they would have been among the superior people of this country."[110]

As set forth in the new state Constitution, the bill of rights guaranteed the traditional rights of Englishmen. Followed by a three days' debate marked by references to legal phases of John Brown's trial, to dual citizenship, and to the Richmond Government,[111] treason against the state was defined as "levying war against it, or in adhering to its enemies, giving them aid and comfort." As in the Federal Constitution, conviction could be had only "on the testimony of two witnesses to the same overt act."

More general provisions, some of them under the heading "Miscellaneous," included the usual separation of powers of government into legislative, executive, and judicial. The alleged right of a state to secede from the Union was denied indirectly by a provision committing the new State to be and "remain one of the United States of America." For the benefit of farmers, particularly corn growers, the date of the general election for state and county officers was changed from the fourth Tuesday of May of each odd year to the fourth Thursday of October of the same year.[112] Suffrage was vested in the "white male citizens of the State," who were protected in its exercise, provided they had been residents of the State one year. The legislature was to exercise only general powers and was expressly forbidden to legalize lotteries and incorporate church or religious denominations. After some speculation regarding the constitutionality and the wisdom of such a course, the legislature was, with the aid of the minister delegates, given power to regulate or prohibit the sale of intoxicating liquors.[113] Dueling, a current method of settling disputes mostly of political origins, was given a blow by denying to any person who thereafter participated in a duel, either directly or indirectly, whether in or out of the State, the right to hold "any office of honor, trust and profit." More important still was the provision that, "No slave shall be brought, or free person of color be permitted to come, into this State for permanent residence." Otherwise slaves were not mentioned.

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[110] Convention, *Debates*, Vol. III, pp. 721-722.

[111] *Ibid.*, Vol. I, pp. 593-609, 658-673.

[112] Prior thereto the general election for state and county officers had been, as determined by statute, on the fourth Thursday in May of the odd years. *Debates*, Vol. III, pp. 774-780.

The brevity of the space given slavery is more indicative of the time given and the hushed silence which encompassed it than of its importance. From the outset of the convention deliberations a small but determined group of delegates, mostly ministers of the gospel led by Gordon Battelle, was bent upon having a free state. With this in view, Battelle offered on December 14, 1861, two resolutions: one to prevent the bringing of more slaves into the state after its admission, and the other to provide for gradual abolition beginning July 4. These resolutions were referred to the committee on fundamental and general provisions and were ordered printed. When they came up again on February 12, 1862, on motion of Hall of Marion County, they were tabled "without day" by a vote of 24 for, to 23 against.[114] All the minister delegates voted "no."

Opponents of slavery had meanwhile been caught napping by the decision of the Convention to extend the bounds of the new State so as to more than double the slave population. Opponents of slavery were thus constrained to a silence that was more "golden" than "ominous." With the later adoption of a cloture rule limiting debate, this silence was made almost complete. As a consequence Battelle was forced to appeal directly to the voters, which he did in a notable address.[115] This appeal was largely responsible for the unauthorized vote against a slave state taken at the time of the referendum on the new state constitution.[116] This vote was, in turn, the basis for an appeal to Congress with results to be noted later.

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[113] *Ibid.*, Vol. II, p. 437. The vote on this question was 27 for, to 16 against.

[114] Convention, *Journal*, pp. 165-166, and "Proposition No. 57;" Convention, *Debates*, Vol. III, p. 422.

[115] Hall, *Rending of Virginia*, pp. 440-456.

[116] William P. Willey, *Formation of West Virginia*, p. 94; Convention, *Journal*, pp. 165-166.

Despite Battelle's aggressive attitude, the slavery provision of the new state constitution, as first drafted, was a compromise agreed upon in the last days of the session with but one dissenting vote, that of Brumfield of Wayne County.[117] Delegates with Abolitionist inclinations favored the compromise, because it meant ultimate end of an admitted evil through the operation of natural causes. Those who spoke for the "yeomanry" and the "peasantry" favored it, because it spared them the humiliation of working on equality with slaves and the threatened competition of a hoard of free Negro laborers, a matter of great concern to newly arrived German and Irish residents. Slave owners and those opposed to immediate abolition approved, as they were thus given an opportunity to dispose of their slave property and placed in a position to benefit from plans then being considered by President Lincoln for compensated emancipation.[118]

(8) FORFEITED AND UNAPPROPRIATED LANDS

Article IX of the new state constitution dealt with forfeited and unappropriated lands. Under this article the state land office, created in 1779 and long a source of displeasure and criticism in western Virginia, was closed. Under the new system all land titles legally derived from the state were confirmed and state waste and unappropriated lands, together with those forfeited prior to 1832 and owned by the state, were to be sold through circuit court proceedings. Lands delinquent for non-payment of taxes since 1832 or forfeited through improper or non-entries, were exonerated and released from such delinquencies and forfeitures, when the taxes, exclusive of damages, did not exceed $20.00 and the acreage did not exceed 1000. Remaining forfeited and delinquent lands previously sold for taxes at sheriff's sales, might be redeemed by their former owners. In all such cases all excess payments, beyond taxes, damages, and expenses, were returned to them. The provisions of this article made strong appeals to new state enthusiasts.

(9) AMENDMENTS

Unlike any of its Virginia antecedents, the first constitution of West Virginia, in keeping with a practice determined in the

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[117] *Ibid.*, p. 168; Convention, *Debates*, Vol. III, pp. 435-436.

[118] For debate on, see Convention, *Debates*, Vol. III, pp. 469-493.

American Revolutionary period, authorized a constitutional convention with power to change the existing constitution in whole or in part. In keeping with practices worked out at the same time, any such convention was to have no authority, however, unless it were called in pursuance of a law "passed by the affirmative vote of a majority of the members elected to each branch of the Legislature" and unless the proposed convention were approved by a majority of the voters in a poll on that subject. Furthermore and in keeping with the same practices, no acts or ordinances of such convention were to be valid until they had been ratified by the voters at such time and in such manner as might be determined by law.

Unlike the first constitution of Virginia, which contained no provision for amendment, and unlike her constitutions of 1830 and 1851, which authorized amendments at fixed dates and at intervals of ten years thereafter for the purpose of reapportioning representation in the general assembly, the first constitution of West Virginia provided for and defined an amending process. Under it amendments might be proposed in either branch of the legislature. If agreed to by a majority of the members elected to each branch, the proposed amendments were entered on its journal and caused to be published "in some newspaper in every county in which a newspaper is printed." At its first session following the next ensuing general election, the legislature might reconsider any proposed amendment. If it were approved by a majority of the members elected to each house, it was submitted to the voters of the State. If ratified by them in a manner and at a time prescribed by law, it became a part of the constitution. This was not an easy process, but it was definite and workable, and for Virginia it was new.

(10) ADOPTION

The Convention having completed its deliberations, the resulting constitution and schedule on February 18, 1862, were adopted by a recorded vote of 49 for, to 0 against. An effort to make the work final through a *sine die* adjournment was defeated by a vote of 17 for, to 28 against.[119] Instead, the five commissioners, John Hall, James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell, and Ephriam B. Hall, who were named in the schedule for submitting the Constitution to the voters, were also authorized to reconvene the Convention "on such day as they may prescribe."[120] If such a course became necessary, the commissioners were furthermore authorized to fill vacancies in the convention membership and were directed to take the necessary steps to secure a representation from the counties proposed to be included in the new State and not represented when the constitution was made.

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[119] *Ibid.*, Vol. III, pp. 448-449; Convention, *Journal*, p. 179.

7. *THE CONSTITUTION APPROVED*

(1) BY THE VOTERS OF VIRGINIA

In compliance with the schedule approved by the Convention, the commissioners named therein caused the new state constitution to be published in such newspapers "as they deemed proper." While this was being done they made preparations for a referendum set for April 3, 1862, at which time polls were to be opened in each township of the fifty-one counties, including Frederick, in the new State. When the time came for this vote, internal conditions prevented the execution of the order in a number of districts, including whole counties in the southern and eastern parts of the proposed State. But this condition was not disturbing to the new state makers. With them loyalty to the Union, together with the nearness to their goal, had superseded legal and other technicalities; so the poll was taken where conditions permitted. With reports from only twenty-six of the proposed fifty-one counties, the total participating vote, including some irregular returns, was 19,376, of which number 18,862 were for the constitution, to 514 against it.[121]

(2) BY THE VIRGINIA GENERAL ASSEMBLY

The next step in the process of making the new state was the most doubtful and the most criticized. The Constitution of the United States provides that, "no new State shall be formed or erected within the Jurisdiction of any other State . . . without the consent of the legislatures of the States concerned as well as of the Congress." It was, therefore, necessary to have the consent of the Virginia General Assembly to the formation of West Virginia, but there were at that time two rival functioning legislatures in Virginia.

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[120] *Ibid.*, p. 178; *Debates*, Vol. III, p. 448. The commissioners had several meetings and kept minutes of their proceedings which are published herewith (see Appendix A).

[121] Returns were published in the Wheeling *Daily Intelligencer* as they became available in the month of April, 1862. See also Hall, *Rending of Virginia*, p. 439.

Undaunted by this situation and imbued by the local notions of loyalty, Governor Pierpont, having been officially notified of the result of the referendum on the new state constitution, on April 18, 1862, he convened the general assembly of the Reorganized Government at Wheeling, on May 6, following. As stated in his call, he wished to lay before the assembly the ratified constitution of the proposed State, as certified by the commissioners in charge, and ask assent to the formation and erection of West Virginia within the jurisdiction of Virginia.[122]

In pursuance of this call the general assembly met at the appointed time and place. It was greeted by a message from Pierpont who took advantage of the occasion to answer critics of the new State, especially those who spoke of it as "revolutionary." They were reminded of the mountain barriers separating eastern and western Virginia, thus rendering the two sections "entirely dissimilar in their social relations and their institutions."[123] Because of this fact dismemberment had long been talked of and only awaited an opportunity which was at hand.

As the assembly program had been worked out before, the Governor's explanations were intended primarily for the country at large. Without further ceremony, the assembly proceeded therefore to the business before it and on May 14, 1862, passed an act giving the consent of "the Legislature of Virginia" to the formation and erection of the "State of West Virginia." This act named the counties comprising the new State. Berkeley, Jefferson, and Frederick were not included, but their inclusion was authorized, "whenever the voters thereof shall ratify the constitution of the new State."[124]

(3) BY CONGRESS

Immediately following approval of the formation of West Virginia by the general assembly of the Reorganized Government, those interested in completing the process turned their thoughts toward Washington, where the Thirty-seventh Congress was in session. In due time the commissioners in charge presented a memorial from the proposed State, which asked admission to separate statehood in the Union. As this request was in due form and accompanied by documents certifying that all the necessary steps in such a procedure had been taken, the memorial was presented on May 29, 1862, to the United States Senate by Senator Waitman T. Willey.[125] At the same time it was referred to the Senate Committee on Territories, of which Benjamin F. Wade of Ohio, was chairman. Five days later duplicate copies of the memorial and the accompanying documents were presented to the House by William G. Brown of Virginia, and referred to the House Committee on Territories.[126]

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[122] Wheeling *Daily Intelligencer*, May 7, 1862.

[123] *Ibid.*

[124] For manuscript copy of this act see Virginia, *Executive Papers* (Pierpont), May 13, 1862.

As John S. Carlile, a new State enthusiast from the outset of the movement, was then a member of the Senate Committee on Territories, everyone looked to him to draft the bill for the admission of West Virginia, but he became so engrossed in his efforts as to delay the bill unduly. When Senator Wade, who had become impatient with the delay, on June 23 reported Carlile's West Virginia Statehood Bill, "Senate Bill No. 365," it was a shock both to the friends and the foes of the new state movement. Among other things it had included fifteen additional counties, Berkeley, Jefferson, Clark, Frederick, Warren, Page, Shenandoah, Rockingham, Augusta, Highland, Bath, Rockbridge, Botetourt, Craig, and Alleghany, only three of which were mentioned in the new state Constitution.

More shocking still was an enabling act authorizing the proposed State, together with the counties included by Carlile, to call a convention for the purpose of making a new constitution. When this constitution had been ratified by the counties of Carlile's proposed state and been approved by the general assembly, the governor of the Reorganized Government was to certify these facts to the President who was authorized, without further action of Congress, to proclaim West Virginia one of the United States, provided she had meanwhile so amended her constitution as to legalize the gradual abolition of slavery.[127] As a number of the counties of the proposed state were known to be proslavery and had been included therein without their consent, and as none of the counties included by Carlile were thought to be favorable to abolition or to the proposed state either, his proposals were generally regarded as a "Trojan Horse," but Senator Willey diplomatically described them as the "mature result" of Carlile's "enlightened judgment."[128]

[125] *Cong. Globe,* 37 Cong., 2 Sess., pt. 3, pp. 2415-2419.

[126] *Ibid.,* pp. 2526-2527.

[127] *Ibid.,* pt. 4, pp. 2941-2942.

[128] Convention, *Debates,* Vol. III, p. 477.

Undaunted, Senator Wade on June 26 called up the West Virginia Statehood Bill for amendment and debate.[129] In the course of the debate, chief discussion centered on the proposal for the gradual abolition of slavery.[130] Instead, Charles Sumner would have incorporated the "Jeffersonian Proviso" of the Ordinance of 1787 for the Government of the Northwest Territory, which abolished slavery and involuntary servitude therein, "otherwise than in punishment of crimes whereof the party shall be duly convicted."[131]

Sumner's proposal enveloped the new state movement in doubt, and for a few days delayed its consideration by the Senate. Determined to make another effort Senator Willey on July 1 called the bill up again.[132] A heated discussion ensued with Senators Wade, Hale, Collamer, Sumner, and Willey participating. It resulted in the defeat of both Sumner's and Carlile's proposals.[133] Instead, a compromise, worked out by Senators Wade and Willey, was substituted[134] and became known as the "Willey Amendment." It provided that, "The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years, shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein."[135]

Inasmuch as the existing statutory law forbade "free persons of color" to come into the state as permanent residents, this provision prohibiting slaves from entering for that purpose was an additional concession to antislavery leaders. Nevertheless, proslavery leaders did not oppose it. Generally, they regarded slavery in the new State as in process of gradual extinction through natural causes.

However, the Willey Amendment was not accepted without a fight. At once, Carlile declared himself opposed to it and to the admission of the new State as well. His action in this matter has been explained as due to his desire to include Frederick, the county of his nativity, but that county was already included conditionally. A better explanation is found in his opposition to Congressional dictation in the domestic affairs of a "sovereign State." Whatever the true explanation may be, he tried to defer action until the first Monday of the following December. In this he was again unsuccessful. On July 14, 1862, the bill passed the Senate with 23 votes for, to 17 against. Eight senators did not vote. Among those voting "no" were Charles Sumner and Zachariah Chandler, uncompromising free state Senators. Carlile voted with them.[136]

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[129] *Cong. Globe,* 37 Cong., 2 Sess., pt. 4, pp. 2941-2942.

[130] *Ibid.,* p. 2942.

[131] *Ibid.,* pp. 2941-2942.

[132] *Ibid.,* pp. 3034-3039.

[133] *Ibid.,* pp. 3307-3320.

[134] *Ibid.,* pp. 3034-3036; 3307-3320.

[135] *Ibid.,* pp. 3307-3320.

The following day the House was officially informed of this action and its concurrence was requested.[137] John A. Bingham, representing the Ohio district bordering northwest Virginia, then moved the passage of the bill, but Joseph Segar of Accomac County, Virginia, although a strong Union man, opposed the dismemberment of his state and moved to lay on the table the bill for that purpose. This the House refused to do, and on motion of Roscoe Conkling of New York, further consideration of the measure was postponed until the second Tuesday of the following December.[138]

When Congress reassembled on December 1, 1862, it was confronted by the results of a number of recent political and military events. Among the former was the decided antiadministration trend in the elections of the preceding autumn and the Emancipation Proclamation, brought forward by Lincoln after the Battle of Antietam with a view to keep England from acknowledging the independence of the Southern Confederacy. On the military side General Lee had been turned back from an attempted invasion of the North; General Grant had all but cleared the Cumberland and Tennessee valleys of Confederates; and a Confederate attempt to regain control of the Kanawha Valley had failed. Moreover, the Baltimore and Ohio Railroad had again been recovered by Federals.

Under these conditions Bingham on December 9, 1862, brought up the West Virginia Statehood Bill again and asked that it be put on passage at once,[139] but the ensuing debate occupied the House for the better part of two days. The opposition argument resolved itself to the contentions that Virginia had not legally consented to the formation of West Virginia and that the dismemberment of Virginia would prove an insurmountable obstacle to her restoration to the Union. On the other hand arguments favoring the bill resolved themselves to the alleged right of a loyal minority to govern a state in the presence of treason and rebellion. This view prevailed by a vote of 96 for, to 55 against.[140]

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[136] *Ibid.*, p. 3320.

[137] *Ibid.*, p. 3362.

[138] *Ibid.*, p. 3397.

[139] *Cong. Globe*, 37 Cong., 3 Sess., pt. 1, p. 37.

(4) BY PRESIDENT LINCOLN

It was eleven days after its passage by the House before the West Virginia Statehood Bill reached President Lincoln in form for his approval. As he took the full time allowed under the Constitution to consider the bill, the resulting uncertainty became ominous to its friends and supporters. A report which reached Wheeling, to the effect that the President was conferring with his Cabinet and others on various phases of the measure, only intensified the growing apprehension. He was accordingly importuned through letters, telegrams and personal interviews in a fashion which cannot be determined until the "Lincoln Papers" become available (in 1947) and probably not then.

Lincoln spent a part of New Year's Eve with friends of the bill, who left the White House without learning his decision. As confidential information had reached them to the effect that the Cabinet was evenly divided the prospects were not assuring, but they found comfort in a statement from the President to the effect that the deciding vote had not yet been cast, and in his request to see them again on the next morning. In compliance with this request, Jacob B. Blair was at the White House quite early and was greeted by the President with the question, "Do you see that signature?" It read, "Approved, Abraham Lincoln." Soon thereafter the "good news" was sent to Governor Pierpont as a New Year's gift.[141]

As stated by Lincoln, his reasons for signing the bill cover two main points, that of constitutionality and that of expediency.[142] On the former he regarded the legislative approval of the Reorganized Government as sufficient to cover the most controverted point. It mattered not that the action was by a body "chosen at elections in which a majority of the qualified voters did not participate." The fact remained that they had had an opportunity to vote. If, under the circumstances, their failure and neglect were countenanced, it would, according to Lincoln, have enhanced "treason against the Constitution" which, in keeping with his manner of reasoning, brought the proposition to a *reductio ad absurdum.*

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[140] *Ibid.*, p. 59.

[141] Ambler, *West Virginia The Mountain State*, p. 390.

[142] John G. Nicolay and John Hay, *Abraham Lincoln, A History*, Vol. VI (New York, 1890), pp. 309-311.

Although Lincoln thought the question of the expediency of the admission of West Virginia a matter for legislative rather than executive determination, he resolved this point to its effects upon the efforts then being made to restore Virginia to the Union. While admitting that she would return "less reluctantly without the division of the old State," he was convinced that the Union would gain more by the admission of West Virginia than it would lose. The Emancipation Proclamation had not met with general favor there, and Lincoln, in keeping with the wishes of an ever growing number of resident leaders, may have been trying to develop a new antislavery party such as was then forming at the North. Continuing he said:

"We can scarcely dispense with the aid of West Virginia in this struggle; much less can we afford to have her against us, in Congress and in the field. Her brave and good men regard her admission into the Union as a matter of life and death. We have been true to the Union under very severe trials. We have so acted as to justify their hopes, and we cannot fully retain their confidence, and cooperation, if we seem to break faith with them."[143]

The President's approval of the new statehood bill was, therefore, largely a war measure; but it was not, on that account, to be regarded as a precedent. In his own words, "Admission of the new State turns that much slave soil to free; and thus, is a certain and irrevocable encroachment upon the cause of rebellion."

(5) By The Recalled Convention

As the admission of West Virginia was conditioned upon her acceptance of the Willey Amendment, it was necessary to refer the matter to the Convention which had made her Constitution. Fortunately recessing had provided for such a contingency, but the commissioners in charge had ceased to function. The chairman, John Hall, was in jail charged with the murder of Lewis Wetzel, editor of the Point Pleasant *Register,* and other delegates were either dead or had resigned.[144] The resulting perplexities were relieved through an informal meeting of members of the general assembly, which, on January 30, 1863, constituted a central committee authorized to make the necessary plans and arrangements for reassembling the Convention.

By a proclamation this committee called special elections for February 5, 1863, to fill vacancies in the convention membership and to give counties not previously represented an opportunity to elect delegates. Most of the resulting elections were uncontested, but that in Ohio County to fill the vacancy created by the death of Gordon Battelle, was seized upon by Carlile and certain state rights Democrats as a pretext to strike the new State another blow. In this effort they found ready allies in the "liberty loving" and "nigger hating" residents of the new State, some of whom had been wrought to frenzy and disloyalty by the Emancipation Proclamation.[145] Newly arrived German and Irish residents were equally eager to safeguard their jobs and their dignity as free white men.

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[143] *Ibid.*, p. 311.

[144] Point Pleasant (W. Va.), *Weekly Register,* November 1, 1862; Wheeling *Daily Intelligencer,* December 12, 1862.

As the result of a short but stubbornly fought contest, Professor Andrew F. Ross, principal of West Liberty Academy and an ardent friend of the new State, won in Ohio County but by the narrow margin of about two hundred in a total vote of approximately twenty-nine hundred.[146] At the same time other new state supporters were elected to fill vacancies in Mason, Marion, and Upshur counties, and delegates were also chosen in counties not previously represented, namely: Greenbrier, [147] Pocahontas, Pendleton, [148] and Morgan.[149] The experiences of Pocahontas County were typical.[150] At that time a number of its residents were refugeeing to Upshur County. From this retreat they petitioned the Convention to seat Dr. David W. Gibson as their delegate, and in keeping with precedents established in the regular session, he was seated. Thus the total number of delegates for the recalled session was raised to fifty-six.

With an almost complete authorized membership, Webster and Monroe counties alone being unrepresented, the Constitutional Convention met at Wheeling, February 12, 1863, in recalled session. Officers of the regular session continued to function, but in the enforced absence of John Hall, the oldest delegate in point of years, Abraham D. Soper, was made president.[151] After seating the newly elected delegates and appointing a special committee on schedule, the Convention proceeded to consider the Willey Amendment to the proposed new state constitution. The pros and cons of this document were presented by Senator Willey himself in an able address which occupied most of the afternoon of the first day of the session.[152]

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[145] Wheeling *Daily Intelligencer*, February 3, 1863; *Ibid.*, February 4, 1863; *ibid.*, February 5, 1863; Ambler, *Francis H. Pierpont*, pp. 200-204.

[146] Wheeling *Daily Intelligencer*, February 7, 1863. The vote was: Ross, 1,550, Richardson, 1,369.

[147] Greenbrier was represented by Andrew W. Mann who was admitted to membership February 14, 1863.

[148] Pendleton was represented by John L. Boggs who was admitted to membership February 12, 1863.

[149] Joseph S. Wheat represented Morgan County. He attended the regular session during its last days but, as his credentials had been lost, he was not seated. Convention, *Debates*, Vol. III, pp. 461-462.

[150] Dr. David W. Gibson represented Pocahontas County and was seated February 13, 1863 as a result of a contest with Samuel Young. Both he and Young were selected irregularly by residents of Pocahontas County refugeeing to Upshur County. For particulars of the Gibson-Young contest see Convention, *Debates*, Vol. III, p. 527.

Prefacing his address by the statement that, "Nothing has ever surprised me more than the opposition which is made to the admission of the new State of West Virginia into the Union by a portion of the people within its limits," Willey traced the various steps in her formation with special reference to the authority of the general assembly of the Reorganized Government. Next he reverted to the conditional admission of West Virginia to show that it was not unprecedented. To prove this he cited at length the conditions imposed upon Missouri, Texas, Kansas, and other states. Then he came to the crux of the matter, which he found in the lurking fear that West Virginia, under the proposed amendment, "will become a free state." Granting that, he could not understand why the selfish interests of two or three thousand masters should stand in the way of a body-politic of 350,000 persons who admittedly had the right to determine their own domestic institutions.

From this point Willey's Address was given almost entirely to documentary proof to show that slavery was a dying institution in western Virginia and that it had been socially and economically harmful to Virginia. He replied to the argument then being advanced to the effect that West Virginia would be overrun by free Negroes who, under the Willey Amendment, were not forbidden admission to the new State for purposes of residence but were so forbidden by statutory law. Speaking for an agrarian economy which did not anticipate present day West Virginia conditions, he said: "There is nothing in the soil or climate of West Virginia to attract a free negro, but much to repel him. Besides the kind of labor which will be required here, will not be of a character to induce his employment."

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[151] Dr. Samuel T. Griffith of West Columbia, succeeded John Hall as the delegate from Mason County; the Rev. Moses Tichenell of Fairmont, succeeded Hiram Haymond, who had moved from the state; and Dr. David S. Pinnell succeeded Richard L. Brooks as the delegate from Upshur County. See Convention, *Debates*, Vol. III, pp. 455, 461, 501.

On February 14 Henry Startzman of Preston County, was elected sergeant-at-arms to succeed James C. Orr. Convention, *Debates*, Vol. III, p. 533.

[152] For text of this address see Convention, *Debates*, Vol. III, pp. 469-498.

Willey could not disassociate the arguments of the new state opponents from the cry then being raised for "peace" which, as he saw it, meant the success of the "Rebels." In such a contingency he predicted that, "West Virginia will be dragged into the Southern Confederacy, like the captive princess chained to the triumphal car of the ancient Roman conqueror." Cut off as she was from eastern Virginia by impassable geographical and natural barriers which no available amount of capital or skill could overcome, and wedged between "the two mighty states, Ohio and Pennsylvania," the inevitable result, as determined by the experience of the ages, would be "perpetual war or consolidation."

To avert such a possibility Willey appealed to his constituents "at large . . . East and West." He evidently had in mind slave owners, free state advocates, the yeomanry, and even the newly arrived Irish and Germans. The effectiveness of the address was attested by a convention order authorizing the printing and distribution of ten thousand copies, eight in English and two in German. When the delegates left for their homes, each one took copies of this document for distribution among his constituents.[153]

Instead of determining the business before it at once and adjourning, the question of compensation for loyal masters under the proposed amendment was raised. To avoid amending in such a manner as to necessitate a second reference of their work to Congress and Lincoln, a "Special Committee on the Question of Slaves Emancipated," with Van Winkle as chairman, was appointed "to inquire and report whether any provision looking or having reference to the compensation of the owners of slaves freed by the proposed amendment of the constitution, should or can with propriety be inserted in that instrument." The committee report was to the effect that loyal owners of slaves at the time of their emancipation would, under the Fifth amendment to the Constitution of the United States, be entitled to recover the actual value of such slaves. At the same time it recommended approval of the Willey Amendment,[154] but action on the Amendment was delayed five days during which the Convention engaged in the most spirited debate of this session. As worked out in the course of this debate, payments to loyal masters were to have been spread over a period of seventeen years, beginning four years after the adoption of the constitution.

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[153] *Ibid.*, Vol. III, pp. 530, 604, 818. Because a printer could not be found readily no copies of the Willey Address were printed in German.

[154] *Ibid.*, Vol. III, pp. 534-537.

It was generally agreed that $480,000 would cover all legitimate claims.

While insisting that such a recommendation would not jeopardize final admission at the hands of Lincoln, when, under the existing plan, he was called upon to proclaim the new State one of the Union, delegates favorable to the Amendment insisted that compensation for possible losses, because of it, was not only just but also legal under the Federal Constitution. Moreover, England had set a commendable example which, if not followed, might defeat the ratification of the Amendment or seriously jeopardize it. More to the point were repeated assertions to the effect that confiscation of slave property would work irrevocable injury to widows and orphans whose inheritances and estates were bound up with the institution of Negro slavery.

Those opposed to the resolution, for the most part preacher delegates, were for compensation for expediency sake to be granted without discussion which they regarded as inopportune, possibly suicidal. They pointed to the fact that persons in high places had their eyes upon the Convention and that its action was to be submitted to a referendum. Knowing "the people of West Virginia," as they did, the preacher delegates could not explain to their constituents even an advisory recommendation which might entail increased taxes to compensate already comparatively opulent masters. They found comfort, however, in the fact that compensation was to be restricted to loyal masters, for, according to Joseph S. Wheat of Morgan County, that simplified the matter, as there were no such persons.[155]

Climaxing one of the ablest arguments of the session, Chapman J. Stuart called attention to the futility of guaranteeing property rights already admittedly secure under the Federal Constitution. Furthermore, he expressed the sentiments of those favorable to the Willey Amendment in these words: "Mr. President, I am willing to sustain this government, to fight for the suppression of the rebellion, yet, sir, if by any act of our people we lose the new State I will feel that I have not a great deal to fight for in western Virginia. . . If we lose the new State we lose that which is of vast importance to us. It certainly surpasses any little interest I may have in a few little negroes."[156]

After vain attempts to amend the compensation resolution by substituting therefor either a request to Congress for an appropriation to be used to compensate loyal masters, or a statement of opinion to the effect that "every kind of property is secure under the Federal Constitution," the proposed advisory resolution was laid on the table by a vote of 28 for, to 26 against.[157] The Willey Amendment did not apply to slaves over twenty-one years of age, and was not therefore wholly unacceptable, even to masters. By a vote of 54 for, to 0 against, and with only three delegates (Hansley, Hoback, and Robinson) not voting, it was approved on February 17, 1863.[158] On the following day the constitution, as amended, was on motion of Van Winkle, adopted by a vote of 52 for, to 0 against,[159] and an address of the delegates to their constituents was read and approved (See Appendix B).[160]

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[155] *Ibid.*, Vol. III, pp. 579-580. See also *Ibid.*, p. 678.

[156] *Ibid.*, Vol. III, p. 642.

Taking advantage of the differences in the Convention, which were also reflected throughout the State and in Washington, Carlile, on February 14, 1863, offered a supplemental bill to the West Virginia Statehood Bill. Under this fifth-rib thrust, the President was to be estopped from proclaiming admission of the new State to the Union until Boone, Logan, Wyoming, Mercer, McDowell, Pocahontas, Raleigh, Greenbrier, Monroe, Pendleton, Fayette, Nicholas, and Clay counties had each ratified the Willey Amendment. As these counties were then either under control of Confederates or were so rent by internal strife as to make elections of any kind impossible, the supplemental bill was an adroit effort to defeat the statehood bill.

Although defeated in the Senate on February 26 by a vote of 28 against, to 12 for,[161] the supplemental bill was ammunition for the increasing number of critics of the new State. Aspersions which they cast upon her and her makers linger to this day. It mattered not that Van Winkle on the last day of the Convention called attention to the fact that the unit of local government had been changed from the county to the township and that referenda were by districts and not by counties. The Constitution of 1872 restored

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[157] *Ibid.*, Vol. III, p. 728.

[158] *Ibid.*, Vol. III, pp. 728-729.

[159] *Ibid.*, Vol. III, pp. 730-731.

[160] This address was not included in the debates and proceedings of the Convention as reported by Granville D. Hall; nor was it printed in any available newspaper of the period. Explanation of these facts is found in the convention authorization of the printing and distribution of 10,000 copies, but at the time of the present printing only two copies of the resulting sixteen page pamphlet were found. One was in the New York Public Library, New York, the other in the State Department of Archives and History, Charleston, West Virginia.

[161] *Cong. Globe*, 37 Cong., 3 Sess., pt. 2, p. 1303.

West Virginia counties to a degree of their pre-Civil War importance, and the importance of the former districts was forgotten. To this day (1942) there are those who call attention to the fact that this or that county did not vote for the new state Consitution.

After determining that the new State could choose officers before she began to function separately, and after giving much time and care to the phraseology of a resolution to Congress asking for an appropriation of two million dollars to be used to compensate loyal masters in the event they were deprived of their slave property in the public interest, the Convention on February 20 voted a *sine die* adjournment. Its last important act was the adoption of "An Ordinance for the Organization of the State of West Virginia." This ordinance, with ten thousand copies of an address to the people and the amended constitution, was to be given the widest possible distribution under the existing conditions.

As provided in a schedule accompanying the amended Constitution, it was on March 26, 1863, submitted to the voters for their approval or rejection. Except soldiers of West Virginia stationed beyond the bounds of the State, care was taken in drawing the schedule to restrict voting to its bounds, and to have polls taken by districts rather than by counties.[162] The time for formally launching the new State was fixed at sixty days after statehood had been proclaimed by the President. Meanwhile all loyal officers, state, county, and township, were to continue to function in the name of the new State until such time as their successors should be elected and qualified. By authorizing the legislature to meet in Wheeling, that city was designated as the capital.

On the last day of the recalled session John A. Dille was elected vice-president of the Convention. This action was taken to meet a contingency such as that caused by the forced retirement of John Hall, first president, and seemingly ignored the fact that the Convention, at the same time, adjourned *sine die*.[163]

(6) BY THE VOTERS, A SECOND TIME

Undaunted by their failure to strike the new State a death blow in the February elections of 1863, Carlile and a number of state rights leaders sought to defeat the Willey Amendment on its referendum stage. Among the state rights opponents were such able leaders as John J. Davis, father of the later distinguished John W. Davis; General John J. Jackson, scion of a distinguished family of state rights devotees; and Sherrard Clemens who, only a short time before, had represented the Wheeling District in Congress.[164] In a manner which did not reflect credit upon those responsible, these gentlemen were prevented from speaking in Parkersburg. Their attack upon the Amendment was futile, but aided by the tide of "Vallandighamism" which was then sweeping the Ohio Valley and by Carlile who remained a Republican, they laid the foundation for a new Democrat party in West Virginia. It continued to gain in strength until 1870, when it wrested control from the "Radicals."

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[162] See articles I and IV of the Constitution, Appendix D; Convention, *Debates*, Vol. I, pp. 73-75 and Vol. III, pp. 813, 847-848; Convention, *Journal*, p. 23.

[163] *Ibid.*, Vol. III, pp. 811-812.

Friends of the new State regarded the referendum on the amended constitution as "the crisis" which, if successfully passed, "ended the trouble in West Virginia." They accordingly took to the hustings. As the date for the referendum drew near, Senator Willey, Peter G. Van Winkle, and Governor Pierpont addressed a mass meeting of Wheeling workingmen; and several imported speakers, among them Horace Maynard of Tennessee, and John A. Bingham of Ohio, were heard on various phases of the situation.[165] The result was a decisive victory for the amendment.

With no reports from districts in ten of the forty-eight counties of the new State, the referendum vote, as indicated in Appendix C, was 27,899 for, to 572 against the constitution as amended. Of these totals 7,696 and 132, respectively, were cast by soldiers, 1,689 of whom were not at the time stationed in West Virginia, and some of whom were then entrenched before Vicksburg.[166]

The vote was certified to President Lincoln on April 16, and four days later he issued the following proclamation under which West Virginia on June 20, 1863, became the thirty-fifth state in the Union:

> Whereas, by the Act of Congress approved the 31st day of December, last, the State of West Virginia was declared to be one of the United States of America, and was admitted into the Union on an equal footing with the original States in all respects whatever, upon the condi-

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[164] Virginia, *Executive Papers* (Pierpont), March 2, 1863; Ambler, *Francis H. Pierpont*, pp. 202-204.

[165] Wheeling *Daily Intelligencer*, March 16, 1863; *ibid.*, March 23, 1863.

[166] For the vote by counties see also Wheeling *Daily Intelligencer*, April 17, 1863, and West Virginia Department of Archives and History (Lewis), *Second Biennial Report*, p. 202.

tion that certain changes should be duly made in the proposed Constitution for that State:

And, whereas, proof of a compliance with that condition as required by the Second Section of the Act aforesaid, has been submitted to me:

Now, therefore, be it known, that I, Abraham Lincoln, President of the United States, do, hereby, in pursuance of the Act of Congress aforesaid, declare and proclaim that the said act shall take effect and be in force, from and after sixty days from the date hereof.

In witness whereof, I have hereunto set my hand and caused the Seal of the United States to be affixed.[167]

(7) BY THE COURT

The Supreme Court of the United States has rendered no opinion on the legality of the formation and admission of West Virginia to separate statehood. In the several cases coming before it involving these points, notably Virginia *v.* West Virginia[168] to determine the territorial status of Jefferson and Berkeley counties, annexed to the latter after she had attained statehood, and in Commonwealth of Virginia *v.* West Virginia[169] to determine the defendant's proportionate share of the Virginia debt as of January 1, 1861, the Court accepted the formation and admission of West Virginia as a fact. As in the case Luther *v.* Borden,[170] decided in 1848, West Virginia statehood was regarded as a political question to be determined solely by Congress. In formulating opinions in Commonwealth of Virginia *v.* West Virginia and in other cases, certain judges, notably the late Oliver Wendell Holmes,[171] reviewed the steps in the formation and admission of West Virginia, but they accepted the action of Congress as final.[172]

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[167] See photostatic copy of the original in Ambler, *Francis H. Pierpont*, pp. 206-207. The original is in the National Archives, Washington, D. C.

[168] 78 U. S. 39 (20 L. Ed. 67).

[169] 209 U. S. 514; 220 U. S. 1; 246 U. S. 565.

[170] 7 Howard 1.

[171] 220 U. S. 1.

[172] With views to influencing the result of the referendum on the amended constitution the Wheeling *Daily Intelligencer* for March 6-7, 1863, and March 17-19, 1863, carried two noteworthy articles. The first of these was by Ephraim B. Hall and was entitled "The New State." The second was entitled "Some Objections to the New State Considered," but, whether significant or not, the name of the author was not given.

PART TWO

A. MEMBERS

Of the Constitutional Convention, assembled at Wheeling, Virginia, November 26, 1861, and re-assembled February 12, 1863, together with their age, places of nativity, occupations, the counties represented, and postoffice addresses.

	Names	Age	Nativity	Occupation	County	Postoffice
1	Battelle, Gordon	47	Ohio	Minister	Ohio	Wheeling
2	Boggs, John	48	Virginia	Farmer	Pendleton	Mouth Seneca
3	Brooks, Richard L.	52	Virginia	Minister	Upshur	Rock Cave
4	Brown, James H.	42	Virginia	Lawyer	Kanawha	Kanawha C.H.
5	Brown, John J.	35	Virginia	“	Preston	Kingwood
6	Brumfield, William W.	33	Virginia	Farmer	Wayne	Ceredo
7	Caldwell, Elbert H.	52	Virginia	Lawyer	Marshall	Moundsville
8	Carskadon, Thomas R.	24	Virginia	Farmer	Hampshire	New Creek Sta.
9	Cassaday, James S.	40	Virginia	“	Fayette	Fayette C.H.
10	Chapman, Henry D.	63	Mass.	Physician	Roane	Spencer
11	Cook, Richard M.	41	Virginia	Farmer	Mercer	Long Branch
12	Dering, Henry	50	Virginia	Merchant	Monongalia	Morgantown
13	Dille, John A.	40	Penn.	Lawyer	Preston	Kingwood
14	Dolly, Abijah	44	Virginia	Farmer	Hardy	Greenland
15	Gibson, David W.	32	Virginia	Physician	Pocahontas	Buckhannon
16	Griffith, Samuel T.	32	Virginia	“	Mason	West Columbia
17	Hagar, Robert	51	Virginia	Minister	Boone	Boone C.H.
18	Hall, Ephriam B.	39	Virginia	Lawyer	Marion	Fairmont
19	Hall, John (President)	56	Ireland	Farmer	Mason	Pt. Pleasant
20	Hansley, Stephen M.	42	Virginia	“	Raleigh	Marshall
21	Harrison, Thomas W.	37	Virginia	Lawyer	Harrison	Clarksburg
22	Haymond, Hiram	55	Virginia	Farmer	Marion	Palatine
23	Hervey, James	41	Ohio	Lawyer	Brooke	Wellsburg
24	Hoback, Johanis P.	26	Virginia	Teacher	McDowell	McDowell C.H.
25	Hubbs, Joseph	54	Penn.	Farmer	Pleasants	St. Marys
26	Irvine, Robert	47	Virginia	Lawyer	Lewis	Weston
27	Lamb, Daniel	51	Penn.	Cashier	Ohio	Wheeling
28	Lauck, Richard W.	49	Virginia	Lawyer	Wetzel	New Martinsville
29	Mahon, Edward S.	45	Maryland	Farmer	Jackson	Ravenswood
30	Mann, Andrew W.	29	Virginia	“	Greenbrier	Falling Springs
31	McCutchen, John R.	51	Virginia	“	Nicholas	Summersville
32	Montague, Dudley S.	61	Virginia	Hotel Keeper	Putnam	Red H. Shoals
33	O'Brien, Emmet J.	42	Virginia	Mechanic	Barbour	Burnersville
34	Parker, Granville	51	Mass.	Lawyer	Cabell	Guyandotte
35	Parsons, James W.	49	Virginia	Farmer	Tucker	St. George
36	Paxton, James W.	40	Virginia	Merchant	Ohio	Wheeling
37	Pinnell, David S.	50	Virginia	Physician	Upshur	Buckhannon
38	Pomeroy, Joseph S.	40	Penn.	Minister	Hancock	Fairview
39	Powell, John M.	36	Virginia	“	Harrison	Buckhannon
40	Robinson, Job	45	Virginia	Farmer	Calhoun	Arnoldsburg
41	Ross, Andrew F.	47	Penn.	Teacher	Ohio	West Liberty
42	Ruffner, Lewis	64	Virginia	Salt Manu.	Kanawha	Kanawha Salines
43	Ryan, Edward W.	25	Virginia	Minister	Fayette	Gauley Bridge
44	Sheets, George W.	38	Virginia	Carpenter	Hampshire	Piedmont
45	Simmons, Josiah	47	Virginia	Farmer	Randolph	Claysville
46	Sinsel, Harmon	44	Virginia	Mechanic	Taylor	Pruntytown
47	Smith, Benjamin H.	63	Virginia	Lawyer	Logan	Kanawha C.H.
48	Soper, Abraham D. (Pres. Recalled Session)	66	New York	“	Tyler	Sistersville
49	Stephenson, Benjamin L.	35	Virginia	Farmer	Clay	Clay C.H.

Names	Age	Nativity	Occupation	County	Postoffice
50 Stevenson, Wm. E.	40	Penn.	"	Wood	Parkersburg
51 Stewart, Benjamin F.	52	New York	Merchant	Wirt	Newark
52 Stuart, Chapman J.	41	Virginia	Lawyer	Doddridge	West Union
53 Taylor, Gustavus F.	26	Virginia	"	Braxton	Braxton C.H.
54 Tichenell, Moses	56	Virginia	Minister	Marion	Palatine
55 Trainer, Thomas H.	42	Virginia	"	Marshall	Cameron
56 Van Winkle, Peter G.	53	New York	Lawyer	Wood	Parkersburg
57 Walker, William	34	Virginia	"	Wyoming	Oceana
58 Warder, Wm. W.	40	Virginia	Farmer	Gilmer	Troy
59 Wheat, Joseph S.	60	Virginia	"	Morgan	Sir Johns Run
60 Willey, Waitman T.	50	Virginia	Lawyer	Monongalia	Morgantown
61 Wilson, Archibald J.	60	Virginia	Farmer	Ritchie	Pennsboro
Hall, Ellery R. (Secretary)	27	Virginia	Lawyer	Marion	Fairmont
Hall, Sylvanus W. (Asst. Secy.)	24	"	Clerk	"	"
Orr, Jas. C. (Serg.-at-Arms)	33	"	Merchant	Ohio	Wheeling
Startzman, Henry (Serg.-at-Arms, Recalled Ses.)	38	"	Tanner	Preston	Kingwood

B.—BIOGRAPHICAL SKETCHES

BATTELLE, GORDON (November 14, 1814-August 7, 1862), delegate from Ohio County, was born at Newport, Ohio, and educated at Marietta College, Marietta, Ohio, and Allegheny College, Meadville, Pennsylvania, where he and Francis H. Pierpont were, during a part of their college course, messmates at a total cost to each of forty-five cents per week. Battelle was graduated at the head of his class. He then read law. During the year 1842-43 he was head of Asbury Academy, Parkersburg, (West) Virginia, and from 1843 to 1851 he was principal of the Northwestern Virginia Academy at Clarksburg, when he resigned to devote his entire time to the ministry of the Methodist Episcopal Church. In the course of his ministry he served charges in Clarksburg, Charleston, and finally in Wheeling, (West) Virginia. In 1861 he was presiding elder of the Wheeling district.

With the call to arms Battelle was made chaplain of the First (West) Virginia infantry. At the request of Governor Pierpont, he was active in other war services. For instance, he looked after the food, clothing, shelter, and health of Federals stationed at Philippi, Elkwater, and Cheat Mountain and made confidential reports to Pierpont. He was chairman of the convention committee on education, and from the beginning to the end of the deliberations, he sought to abolish slavery in the new State. Although he was outgeneraled in this effort, he was indirectly responsible for the so-called Willey Amendment which provided for the gradual abolition of slavery in West Virginia. Battelle's influence in this matter was attested in the memorial exercises to his memory on the opening day of the recalled session of the Convention. He died of typhoid fever in line of duty.

References: J. W. Hamilton, *Gordon Battelle — Preacher, Statesman and Soldier* (1916); O. D. Lambert, *Pioneer Leaders of West Virginia* (1935), pp. 143-151; C. H. Ambler, *West Virginia Stories and Biographies* (1937), pp. 241-245; George C. Wilding, *Promoted Pioneer Preachers* (1927).

BOGGS, JOHN (October 15, 1815-May 14, 1893), delegate from Pendleton County in the recalled session, was born in Franklin, present county seat of that county. He was the son of John and Margaret (Kee) Boggs, Irish immigrants, who settled in 1807 on South Branch River. Seven children, four boys and three girls, were born to this union. In 1818 they moved to the Mouth of Seneca, where John Boggs, Jr., subject of this sketch, lived and died. In 1845 he married Elizabeth Carr of Pendleton County, to which union six children, five boys and one girl, were born. In 1895 one of them, William Henry Boggs, still living (1941), represented Pendleton County as a delegate in the West Virginia Legislature.

John Boggs, Jr., twice sheriff of Pendleton County (1865-1866, and 1867-1871), was a farmer and stock man on a large scale. He and his brother, Aaron Boggs, each owned several thousand acres at and near the Mouth of Seneca and were among the few slave owners of that region. In the secession controversy Aaron Boggs sided with the Confederates, John with the Federals. In 1863 the latter organized the "Pendleton Scouts," otherwise known as the "Swamp Dragons," which in May, 1864, were called into active service. In that year Captain Boggs withstood a Confederate attack at Petersburg, in its only important engagement of the war. He was later a delegate in the First, Second, Third, and Ninth West Virginia legislatures. Like most members of his family, he was a member of the Presbyterian church. A monument marks his grave on the top of an arm of Allegheny Mountain, about one mile northeast of Onego, Pendleton County. His children in the order of their ages were: Joseph F., Isaac P., Henrietta, Aaron C., Martin Kenny and William H. (twins), and John A.

References: Oran F. Morton, *History of Pendleton County*, pp. 182-183, 373, 403; and Boggs, Family Bible.

BROOKS, RICHARD LOCKE (December 5, 1810-September 25, 1895), delegate from Upshur County, was a son of Richard and Margaret (McClancy) Brooks. Through his grandmother, Anne Locke, wife of William Brooks of Prince William County, Virginia, he descended from John Locke of England. He was born in Tazewell County, Virginia. During his teens and early manhood he was a farmer, tanner, cooper, carpenter, and schoolteacher. Early in life he joined the Methodist Episcopal church. He was licensed in 1834 by the Quarterly Conference of the Guyandotte Circuit as a preacher. In 1843 Bishop Joshua Soule ordained him deacon in the Old Ohio Conference and in 1848 he became a charter member of the Western Virginia Annual Conference. As a member of this conference he served these charges: Logan Court House, Wayne Court House, Elk River, West Fork Mission, Barbour, Kingwood, West Milford, Burnsville, and Frenchtown.

As a constitution maker the Rev. Brooks was especially interested in free public schools. He was one of two delegates who voted to call the new State "Western Virginia." Because of failing health, he retired in 1861 from the active ministry. He spent the rest of his life in the southern part of Upshur County near present Shelbyville, where he died and was buried on the Brooks homestead.

References: Brooks family records; Convention, *Journal.*

Brown, James Henry (December 25, 1818-October 28, 1900), delegate from Kanawha County and son of Dr. Benjamin Brown of Cabell County, (West) Virginia, was born there. He was educated in Marietta College, Marietta, Ohio, and in Augusta College, Augusta, Kentucky, a Methodist institution from which he was graduated in 1840. He then studied law in the office of John Laidley, Sr., of Cabell County, and was admitted to the bar in 1842. In 1848 he moved to Charleston, Kanawha County, where he soon rose to distinction in his profession.

Like many residents of northwest Virginia in the forties and fifties of the last century, Brown was a states rights Democrat. As such, he was a loyal supporter of Henry A. Wise, Governor of Virginia from 1856-1861, and of Albert Gallatin Jenkins who represented the Cabell District in Congress, but he refused to accept the Virginia Secession Ordinance. Instead, he became a member of the first general assembly of the Virginia Reorganized Government at Wheeling, but his services as a legislator and constitution maker were interrupted by his election in the winter of 1861-1862 to the judgeship of the Eighteenth Judicial Circuit of Virginia to succeed David McComas who had cast his lot with the Confederates. On May 28, 1863 Brown was elected one of the three judges of the West Virginia Supreme Court of Appeals.

Like other states rights Democrats, Judge Brown became a Republican. As such he was nominated to succeed himself as a member of the State Supreme Court of Appeals but failed of election, together with the other candidates of his party. In 1875 he was its caucus nominee for election to the United States Senate, and he was twice, first in 1883, to fill a vacancy, and again in 1886, nominated for election to represent the Third West Virginia District in Congress. Meanwhile, he served one term (1883) as a Republican delegate in the West Virginia Legislature with his son, James F. Brown, an active Democrat. Judge Brown was a fluent and forceful speaker.

Although educated under Methodist influences Judge Brown was an active Presbyterian of Northern sympathies. When a portion of his congregation joined the Greenbrier Synod, he refused to go with it and was chiefly responsible for keeping most of his associates loyal to their Northern attachment. In 1881 he was a delegate from West Virginia to the International Sunday School Convention at Toronto, Canada, and in 1883 he was a commissioner from the West Virginia Presbytery in the Presbyterian Convention at Saratoga, New York. He was twice married, first to Louisa M. Beuhring of Cabell County, (West) Virginia, and second to Sally S. Shrewsbury of Charleston, West Virginia.

References: W. S. Laidley, *History of Charleston and Kanawha County, West Virginia and Representative Citizens*, pp. 97-101; Atkinson and Gibbons, *Prominent Men of West Virginia*, pp. 270-272.

BROWN, JOHN JAMES (November 19, 1825 - September 30, 1905), delegate from Preston County and only son of Robert and Annie (Hawthorne) Brown, was born in Kingwood, Preston County, (West) Virginia. He was educated at Monongalia Academy, Morgantown, Virginia, and at Washington College, Washington, Pennsylvania, from which institution he was graduated in 1845. He later read law with his uncle William G. Brown, a representative in the Twenty-ninth, Thirtieth, Thirty-seventh and Thirty-eighth Congresses. He was a member of the Second Wheeling Convention and a senator in the First, Second and Third West Virginia legislatures.

John J. Brown was best known as a lawyer and a business man. In 1864 he moved from Kingwood to Morgantown, West Virginia, where he was for a long time president of the Merchant's National Bank and interested with others in a number of promotion enterprises. Most important of these was a proposed railroad, incorporated February 26, 1870, to connect northern and southern West Virginia by way of Morgantown, Fairmont, Clarksburg, Charleston, and Wayne County.

Interest in such things did not divert him from things civic and patriotic. In 1869 he, together with Dr. Alexander Martin, Senator Waitman T. Willey, John A. Dille, George C. Sturgiss and others, organized the West Virginia Historical Society which functioned for several years and sponsored Waitman T. Willey's *Life of Philip Doddridge* (1875). On July 4, 1876, Brown made a notable address, part of the memorial exercises celebrating the centennial of the formation of Monongalia County.

December 30, 1868, John J. Brown married Mary Ellen Gay, youngest daughter of Mathew Gay of Morgantown, West Virginia. Three children, Gay Alexandria, Margaret, and James M. G., were born to this union. He was a Mason and for fifty years was an active member of the Methodist Episcopal church. He was buried in Oak Grove Cemetery, Morgantown, West Virginia.

References: Rush, West and Company, Publishers, *Biographical and Portrait Cyclopedia of Monongalia, Marion and Taylor Counties, West Virginia* (1895), "Monongalia County," pp. 61-77; Samuel Wiley, *History of Monongalia County* (1883), pp. 283-287; and J. M. Callahan, *History of Making of Morgantown, West Virginia* (1926).

BRUMFIELD, WILLIAM WIRT (May 12, 1828-July 8, 1902), delegate from Wayne County, was a Union Leader. He was a native Virginian, but little is known of his early life and his education. After his service in the Convention, where he cast the only vote against the slavery compromise, he was an unsuccessful candidate for sheriff of Wayne County, where he was a justice of the peace and a member of the county court. In 1866 his claim to election as a delegate from that county in the state legislature was successfully contested.

References: Brumfield family recollections and Wayne County records.

CALDWELL, ELBERT HALSTEAD (April 21, 1809-June 16, 1869), delegate from Marshall County, was a son of Alexander Caldwell, first judge of the Federal District for Western Virginia. Elbert H. Caldwell was born in Wellsburg, where his father read law with Philip Doddridge and was for a time a member of the bar. In 1811 he moved to Wheeling where his son grew to manhood and was educated. He also took "a special course in one of the New England colleges." When Marshall County was formed in 1835, he was practicing law at Grave Creek and Elizabethtown and cast his lot with the new county.

As a resident of Marshall County, Elbert H. Caldwell served in many positions of honor and trust. He was its first commonwealth attorney and was subsequently re-elected to that office. From 1838 to 1841 he represented that county in the Virginia General Assembly. In 1838 he was elected county clerk, which office he held at the time of the adoption of the Virginia Secession Ordinance, but he refused to go along with this attempt to dismember the Union. Instead, he became a member of the Second Wheeling Convention. He took an active part in making the first constitution of West Virginia, and was one of a commission of five responsible for submitting it to a referendum and carrying on in the interim. With the admission of West Virginia to statehood, he was in 1863 elected judge of the First Judicial Circuit. He was re-elected in 1865 and was judge of that circuit at the time of his death.

Judge Caldwell and his wife, formerly Ellen McMechen, daughter of Benjamin McMechen of Wheeling, were among the first members of Trinity Parish Episcopal Church of Moundsville, West Virginia, and he was one of the first vestrymen of that parish. Through the marriage of his youngest sister, Mary Elizabeth, he was a brother-in-law of Sobeski Brady, one time mayor of Wheeling and, during the governorship of Henry M. Mathews, secretary of state of West Virginia. Judge Caldwell's funeral was attended by Governor Arthur I. Boreman and other state officers. Members of the Ohio County bar attended in a body and wore mourning in his memory for thirty days. He was survived by his wife and five children: Benson M., Alexander H., Eliza Jane, Mary O., and Ella M.

References: Wheeling *Intelligencer,* June 19, 1869; Brant and Fuller, publishers, *History of the Upper Ohio Valley* (1890), Vol. I, p. 546.

CARSKADON, THOMAS ROSABOOM (May 17, 1837-January 21, 1904), delegate from Hampshire County and youngest member of the Convention, grew up on a farm with scant education. His father, Thomas Carskadon, a slave owner, represented Hampshire County in the Virginia General Assembly for six years (1827-1832), where he, after the Nat Turner insurrection, favored the abolition of Negro slavery. He was a Whig and in keeping with the political traditions of his family, his son in 1860 cast his first vote for Belle and Everett. He was outspoken in opposition to secession, for which he paid with the loss of one hundred twenty-five head of cattle and twenty-five horses. Resentment did not stop with these acts and young Carskadon was forced to flee the state for his life. In his absence he was, through assistance of soldiers stationed at New Creek (Keyser), elected a delegate to the Convention.

Despite his immaturity and limited education, Carskadon took part in the debates of the Convention, but always with deference to those of greater experience than himself in statecraft. Before the war ended he became a Radical Republican. He was appointed by Lincoln to be Assistant United States Assessor for the District of West Virginia, but President Johnson removed him. He was a

Presidential elector on the Republican ticket in 1868 and again in 1876. For many years he was a member of the West Virginia State Republican Committee.

In 1884 Carskadon tried to induce a committee on resolutions of the State Republican Nominating Convention to go on record as favoring submission of a prohibition amendment to a proposed referendum. When the committee refused his request, he carried his efforts to the floor of the Convention, where he was defeated amidst hisses and jeers by the delegates. He then joined the Prohibition party and was in 1888 its candidate for governor of West Virginia. Already he had won nationwide distinction as a prohibition lecturer. In support of that cause he was later referred to as the "Lincoln of West Virginia." Since boyhood he had been a member of the Methodist Episcopal church. He was honored by election and appointment "to every position of trust and responsibility open to a layman of that denomination." During most of his life he lived at "Radical Hill" near Keyser, and was a successful farmer and stockman.

References: George W. Atkinson and Alvaro F. Gibbens, *Prominent Men of West Virginia* (1890), pp. 399-400.

CASSADY, JAMES SOLACE (June 4, 1819-May 14, 1898), delegate from Fayette County in the regular session, was born in Floyd County, Virginia. In 1853, he, together with his mother, five sisters, and two brothers, Kennerly and William R. Cassady, moved to a farm on Laurel Creek, about five miles west of Fayetteville in present Fayette County, West Virginia, where he engaged in farming. February 19, 1867, he married Emily A. Young of Putnam County, West Virginia, daughter of the Rev. John Valley Young, a Union soldier. Their only child, Mabel Kirby Cassady, died May 20, 1913, at the age of forty-five. She was unmarried.

The Cassadys were members of the Methodist Episcopal church, and Kennerly Cassady was a local preacher of that sect. In 1859-60 he filled appointments for "a man named Gregg," a circuit rider from Pennsylvania who spent most of his time "geologizing" in the region about Fayetteville. When the War of Secession began, James S. Cassady raised a company of home guards, which he placed at the order of General W. S. Rosecrans. Under a thirty-day leave from Rosecrans and bearing a petition signed by members of his own company, he was admitted to membership in the Convention. His leave was extended but he resigned on February 1, 1862, and, without the formality of an election but also at the request of petitioners, was two days later succeeded by Edward W. Ryan, a minister in the Methodist Episcopal church.

James S. Cassady was a delegate in the Fourth West Virginia Legislature (1866). From 1866 to 1872 he was circuit clerk of Fayette County, West Virginia, and from 1867 to 1873 was its first county superintendent of schools. He and his wife were buried in the Cassady family graveyard on Laurel Creek, Fayette County, West Virginia.

References: Atkinson and Gibbens, *Prominent Men*, p. 685; Records of Fayette County, West Virginia; West Virginia First Constitutional Convention, *Debates*, and *Journal;* War of Rebellion, *Official Records*, Series II, Vol. II, pp. 1476-1478.

CHAPMAN, HENRY DANIEL (July 12, 1799-March 12, 1870), delegate from Roane County, was born at Pittsfield, Massachusetts, and educated at Williams College and Berkshire Medical School in that state. Together with his brother, Hiram Chapman, he came to Roane County, about 1842. He married Miss Lois Winegar who died June 20, 1856. After her death he continued the practice of his profession and made his home with his brother. At the beginning of the War of Secession, he raised a company of home guards. Under his leadership this company participated in a skirmish on the Duke farm in Reedy district of Roane County, where Captain Chapman was wounded. He was one of the commissioners who in 1863 divided Roane County into townships.

References: William Bishop, *History of Roane County;* Family Records in possession of descendents.

COOK, RICHARD MADISON (November 5, 1820-September 10, 1904), delegate from Mercer County and son of William and Katie (Stewart) Cook, was born near the spot where his paternal grandfather, a Revolutionary soldier of Shenandoah County, Virginia, made in 1799 the first permanent settlement in present Wyoming County, West Virginia. The next year his maternal grandfather, Captain Ralph Stewart, also a Revolutionary soldier, made the second permanent settlement in that county. In 1840 he married Mary (Aunt Polly) Gunnoe, to which union ten children, six boys and four girls, were born. Two of the boys, William B. Cook and Lane S. Cook, were soldiers in the Union army. At various times and for brief periods, Richard M. Cook was an exhorter, first in the Baptist, then in the Regular Anti-Mission Baptist, and finally in the Christian Baptist churches.

After the constitution makers at Wheeling decided in December, 1861, to include McDowell, Mercer, Monroe, Greenbrier, and Pocahontas counties in West Virginia so as to embrace all

Virginia west of the Alleghenies, except Buchanan and Lee counties, it was considered proper to have the newly included counties, or as many of them as possible, represented in the Convention. Accordingly, at the request of Colonel Thomas Little and "various citizens of Mercer County," probably refugees to Wyoming County, Cook was seated. The request came from Flat Top Mountain, Wyoming County, and took no cognizance of the fact that Mercer County had not, in compliance with the Dismemberment Ordinance of the Second Wheeling Convention, voted for annexation to the proposed new State. Moreover, Cook was not a resident of Mercer County. He was admitted to membership January 21, 1862. Sometime between its two sessions he organized a company of home guards, which functioned until the end of the war.

In 1867 Captain Cook was elected superintendent of schools for Wyoming County for a two-year term. He succeeded himself for another term of two years. He was later a deputy assessor of Wyoming County and a member and secretary of the board of education of his home district. During the war and for fifteen years thereafter, he lived on Rockcastle Creek near Pineville, but in 1880 he moved to Turkey Creek, where he died. He was buried in the Walker Cemetery, on his old home place on Rockcastle Creek. He never lived in Mercer County.

References: Princeton (W. Va.) *Observer*, June 9, 1938; David E. Johnston, *A History of the Middle New River Settlements* (Huntington, 1906), p. 199; War of Rebellion, *Official Records*, Series I, Vol. XII, pp. 116-118.

DERING, HENRY (1811-July 9, 1868), delegate from Monongalia County, was a son of George Small and Nancy (McNeely) Dering. He was of the third generation of his family in present West Virginia. His grandfather, Henry Dering, following his marriage in 1784 to Rebecca Musser, moved to Hagerstown, Maryland. About 1787 they moved to present Morgantown, West Virginia, where their eight children intermarried with prominent families of that town and community. Their sons became leaders in local business enterprises. The subject of this sketch was a drygoods merchant. He was not active as a constitution maker. He was chairman of the convention committee which worked out a compromise between northern and southern West Virginia on internal improvements and thus assured acceptance by the voters of the convention's work. His death followed "a mental aberration . . . owing partly to financial difficulties." Most of the Derings were Methodists and Henry Dering was buried in the Methodist Episcopal Cemetery, Morgantown, West Virginia. He was survived by his wife Nancy, and two sons, Stealey and Henry.

References: Morgantown *Weekly Post,* July 18, 1868; Callahan, *History of the Making of Morgantown, West Virginia* (Morgantown, 1926), "The Dering Family," pp. 85-86.

DILLE, JOHN ADAMS (July 19, 1821-December 19, 1896), delegate from Preston County and son of Ezra and Mary (McFarland) Dille, was born near Prosperity, Washington County, Pennsylvania, and educated in the schools of that county, in Green Academy, and in Washington (Washington and Jefferson) College, Pennsylvania. Because of impaired health, he did not finish his college course and in 1843 moved to Kingwood, Preston County, Virginia. While recuperating he read law in the office of William G. Brown, Sr., and in 1844 was admitted to the bar of that county. In 1845 he formed a partnership with his preceptor, which, as "Brown and Dille," was continued until 1849, when Dille formed a partnership with his brother-in-law, B. M. Hagans. When Hagans moved to Cincinnati in 1850, Dille, lone handed, pursued his profession to distinction.

In 1860 he favored the candidacy of Stephen A. Douglas for the Presidency and was outspoken in his desire for the preservation of the Union. He was active in the Convention and on the last day of the recalled session was made its vice-president. In May, 1863, he was elected Judge of the Second Judicial Circuit comprising Preston, Monongalia, Taylor, and Tucker counties, and filled that position continuously until January 1, 1873. In 1864 Judge Dille moved to Morgantown, Monongalia County, for the purpose of educating his children.

In 1849 he had married Jane Rachel, daughter of Elisha M. Hagans of Kingwood, who died less than three years later and left one child, Oliver Hagans Dille. In 1853 he married Linnie Suter, eldest daughter of Thomas Brown of Kingwood. To this union two children, Clarence B. and Mary, were born. Judge Dille took an active interest in education on all levels, and for many years was a ruling elder in the Presbyterian Church. His fine qualities were attested in resolutions adopted at the time he left the bench by the several bar associations which practiced in his court. Thereafter he devoted his time largely to grazing and agriculture on his farm in Monongalia and Preston counties.

References: Samuel T. Wiley, *History of Monongalia County, West Virginia* (Kingwood, 1883), pp. 324-331; West Virginia Constitutional Convention, 1861-63, *Debates;* Rush, West and Company, Publishers, *Biographical and Portrait Cyclopedia of Monongalia, Marion and Taylor Counties, West Virginia,* pp. 57-61.

DOLLY, ABIJAH (February 9, 1817-April 29, 1898), delegate from Hardy County, was born in present Grant County, West Virginia, near Seneca, Pendleton County, a son of Andrew and Susanna (Smith) Dolly. His grandfather, John Dolly or Dahle, was a member of a "picked company" of Hessian soldiers, who served in the American Revolutionary War under Lord Cornwallis and then settled in present Pendleton County, West Virginia, whence his twelve sons carried their family name to many parts of the United States and to other parts of the world. Abijah's family lived on North Fork of South Branch River and like other residents of that region, belonged to the Methodist Episcopal church and were strong for the Union. He was twice married, first (March 29, 1838) to Jamima Michael who bore him nine children: James, Mary, John, William, George, Lydia, Ann, David, and Margaret, and second (December 16, 1874) to Ruhama George who also bore him nine children: Alice, Oscar, Wilhelmina, Clarence, Lillian, Cora, Edwin, Clara, and Catherine. Three of his sons by his first wife, James, John, and William, were Federal rangers, and James and William lost their lives in that service. His son, John Dolly, was the first sheriff of Grant County, West Virginia. Most of the other children made their homes in the West, where some of them attained prominence.

When the War of Secession began, Abijah Dolly resided at Greenland Gap, a strategic point. At once he cast his lot with the Union and with the aid of Federal soldiers stationed at New Creek (Keyser) was elected a delegate to the Convention. Toward the end of the war he achieved prominence because of his lone-hand capture of Major George Alfred Lawrence (1827-1876), a British barrister and novelist whose *Guy Livingston* (1857) "enjoyed a tremendous sale." Major Lawrence's desire for adventure and his enthusiasm for the Confederate cause brought him to America to offer his services to the Confederacy. After several failures to get through the Union lines, he thought himself on the point of realizing that ambition, when, on a dark night, he was captured by Dolly on his farm at Greenland Gap. For this "noble, patriotic, and unselfish service" Dolly was, in a letter dated April 11, 1864, presented by the Secretary of War with a check for two hundred dollars. However, Major Lawrence did not think so well of the feat, and in his *Border and Bastile* spoke somewhat disparingly of it and Dolly.

Abijah Dolly was a delegate in the Second and Fourth, and a senator in the Fifth West Virginia legislatures. During the Radical Republican regime in West Virginia, he was a trusted adviser to Governor Arthur I. Boreman and for a time he was a supervisor and a justice of the peace in Grant County. Because of financial reverses due in part to his inability to collect for supplies furnished Federals in the War of Secession, he lost property at Greenland. In 1894, he moved to a mountain farm owned by his wife near Martin, Grant County, West Virginia. Here he died and was buried in the nearby Knobley Cemetery of the Church of the Brethren, with which sect he affiliated following his second marriage.

References: Dolly, Family Records; Grant County, West Virginia, Records.

GIBSON, DAVID W. (1829-February ....., 1904), delegate from Pocahontas County and son of David and Nancy (Sharp) Gibson, was born on Old Field Fork of Elk River in present West Virginia, and was educated in Buckhannon Academy, Buckhannon, Virginia. He studied medicine in Richmond. During most of the War of Secession he was a physician in the Federal army. He was also a scout. Because of his scouting experiences his record was markedly varied and full of conflicting traditions. For instance, according to one account, he killed Colonel John A. Washington, one of Lee's aides. According to another tradition, he was a member of the scouting party which killed Colonel Washington. According to still another tradition, he was neither at or near Elkwater at the time. In an encounter with Confederates his brother was killed, and he narrowly escaped capture.

January 24, 1860, David W. Gibson married Martha, daughter of Jacob and Ellen Stalnaker of Elkwater, Randolph County. To this union three children, William, Florence, and Charles, were born. About the time of his marriage Dr. Gibson built a residence and office at the mouth of Gibson Run near Elkwater, where he built up a practice which covered a large part of Randolph, Pocahontas, and Webster counties. His right to represent Pocahontas in the Convention was contested by the Rev. Samuel Young. The proceedings incident to this contest brought out points with respect to the regularity and legality of the formation and admission of West Virginia to separate statehood. Gibson died at his residence and was buried at Elkwater in an unmarked grave.

References: Convention, *Debates* (Recalled Sess.); Elkwater, W. Va., traditions.

GRIFFITH, SAMUEL T. (February 21, 1827-September 27, 1868), delegate from Mason County in the recalled session in place of John Hall, resigned, was born in Marshall County, son of Elijah and Ann Griffith. June 7, 1859, he married Mary Jane, daughter of the Rev. Samuel and Elizabeth Jones, residents of the Woodhill community, Marshall County. About the beginning of the War of Secession he established himself in West Columbia, Mason County, (West) Virginia, as a physician. After a few years, he was attacked by a pulmonary affliction which resulted in his death. Suffering from the same malady, his wife died November 4, 1869, and was buried by his side in the Woodhill Cemetery, Marshall County. Dr. Griffith was a member of the Fraternal Order of Odd Fellows, and his family and his wife's family were active members of the Methodist Episcopal church. His will gave specific instructions for the education of his children: Waitman Thomas William Hoover Griffith, later a popular schoolteacher in Marshall County, and West Virginia Griffith who married Eugene Weddle.

References: Marshall County, West Virginia, Records; Mason County, West Virginia, Records; Griffith Monument, Woodhill Cemetery, Marshall County, West Virginia.

HAGAR, ROBERT (January 1, 1810-October 19, 1878), delegate from Boone County, was born on Sixmile Creek in that county, when it was yet a part of Kanawha and Cabell counties. Hagar's family was of German origin. According to tradition its founders resided for a time in Bucks County, Pennsylvania, before moving about 1790 to present Giles County, Virginia. About 1807 three brothers, James, Michael, and Phillip, moved to present Boone County, West Virginia, where Robert, subject of this sketch, became one of the largest individual resident land owners in present West Virginia south of the Great Kanawha River. He was a Whig and a minister in the Methodist Episcopal church. About 1831 he married Ruth Adkins, daughter of Joshua Adkins, of Boone County, who bore him eleven children, two of whom, Montgomery and Enoch A., served in the Federal army in the War of Secession.

A circuit rider of wide contacts, the Rev. Hagar was a power in an area predominately Confederate. He opposed secession and though designated irregularly, accepted membership in the Convention to make a constitution for "the State of Kanawha." As a constitution maker his chief interest was in free public schools which he believed would in time enable the new State to "catch up" with civilization. From 1863 to 1869 inclusive, except the 1865 session, he was continuously associated with the West Virginia legislature, first as a delegate (1863-1864), then senator (1866-1867), again as a delegate (1868), and finally as doorkeeper of the Senate for its 1869 session. His home life was unpleasant and about 1869 he gave his lands to his children and moved to Kentucky, where he died and was buried on Middle Fork of Rockcastle Creek about four miles from Inez, Martin County.

References: Data gathered by Sigfus Olafson of Madison, West Virginia, who had access to Robert Hagar's Family Bible and to the records of Boone County.

HALL, EPHRAIM BENONI (August 29, 1822-January 16, 1898), delegate from Marion County, was born at Middletown, Virginia, now Fairmont, West Virginia. He was the son of Rynear Hall and his wife, Susannah (Lowe) Hall, and was one of fourteen children. After his graduation from Rector College, Pruntytown, (West) Virginia, he practiced law in his home town, where, May 10, 1854, he married Ella Sophia Jones. He was a member of the First and Second Wheeling conventions, and during 1865 was attorney general of West Virginia. In October, 1865, he was appointed judge of the Tenth Judicial Circuit composed of Jefferson, Berkeley, and Morgan counties, which position he held until in 1872, when he resigned and moved to Santa Barbara, California, because of his wife's failing health. In his new home he continued the practice of his profession and was active in church work.

References: See Santa Barbara *Morning Press*, January 23, 1898.

HALL, JOHN (April, 1805-April 30, 1882), delegate from Mason County during the regular session and president, was born in Tyrone County, Ireland, son of John Hall who came to America in 1807 and settled in Rockingham County, Virginia. Three years later he moved to Mason County in present West Virginia, where John Hall, Jr., grew to manhood with only the rudiments of an education. By close application and a bent for learning he became well-informed and at the time of his death was reported to be the wealthiest person in Mason County. Early in life he married Olivia, daughter of Thomas Hogg, a prominent citizen of that county. To this union ten children were born, seven of whom died in infancy and youth. One, Mrs. Benjamin J. Redman, survived their father. A son, Major John Thomas Hall, of the Fourth (West) Virginia, was killed in action at Beech Creek (August 6, 1862), and another son, Lieutenant Colonel James Robert Hall, of the Thirteenth (West) Virginia was killed at Cedar Creek (October 19, 1864). A family tradition is to the effect that James Robert Hall volunteered to avenge the death of his brother.

Although they ended in tragedy, John Hall's political activities were tributes to his ability and fine personality. At the age of eighteen he was deputy sheriff of Mason County and at the age of twenty he became its sheriff. As a Whig he was in 1844 elected a delegate in the Virginia General Assembly. He served one term. In 1851 he was elected a senator in the general assembly and served one term. He opposed secession and was a member of the First Wheeling Convention. As president of the First Constitutional Convention of West Virginia, he presided in a masterly manner and was prominently mentioned for political preferment in the new State.

Hall's political career was cut short on October 23, 1862, when he killed Lewis Wetzel, editor of the *Point Pleasant Register*, as a result of a controversy which grew out of proposals to suppress that newspaper for its alleged anti-Union sentiments. After being detained in jail for some time, Hall was found guilty of manslaughter and fined $5,000. He continued to reside in Mason County, as an honored and respected person. In 1870 he joined Pleasant Flats Presbyterian Church and soon thereafter was made an elder. His remains repose by the side of those of his wife in James Hogg Cemetery at Pleasant Flats near Point Pleasant, West Virginia.

References: Atkinson and Gibbons, *Prominent Men*, p. 313; Point Pleasant *Weekly Register*, March 6, 1862; *Ibid.*, March 6, 1862; *Ibid.*, October 29, 1862; *Ibid.*, May 3, 1882.

HANSLEY, STEPHEN MANUEL (1824-July, 1899), delegate from Raleigh County, was born on Tug Fork of Sandy River, Logan, now Mingo County, West Virginia, son of Stephen and Nancy (Farley) Hensley, pioneer settlers of that region. After his father's death, his mother married Pyrrhus McGinnis of Fayette, now Raleigh County, West Virginia, who owned a large tract of land on Marsh Fork of Coal River and was the progenitor of numerous present day families in southern West Virginia. For a time young Hensley made his home with his stepfather. About that time and for some unknown reason, he changed the spelling of his family name to Hansley. May 8, 1845, he married Phoebe Jones, to which union were born three children: Sarah Virginia (1847) who married the Rev. Austin Workman of Boone County, (West) Virginia, and had nine children; Achilles (1849) who never married and died in 1872 in Texas; Cynthia Elizabeth (1851) who late in life married Solomon Hill and died without issue. Hansley's first wife died while his children were young. March 2, 1867, he married Rebecca Walls of Raleigh County. No children were born to this union. Hansley was an active member of the Methodist Episcopal church, was serious minded, and well-informed.

November 20, 1861, he enlisted in Company H, Seventh (West) Virginia Cavalry and six days later was at Wheeling as a member of the Convention. While serving in that capacity he was on February 15, 1862, discharged from military service by order of General Rosecrans on account of nearsightedness. At the time of his death he drew a pension from the Federal Government. During the year 1867 he was recorder of Raleigh County, but shortly thereafter he moved to Gallipolis, Ohio. In the 1880's he returned to West Virginia and made his home at Marmet, Kanawha County, where he died and was buried in the Old Stone Church Cemetery of that place. He was probably descended from James Hensley, a pioneer settler at Lens Creek, who married a daughter of William Morris, first permanent resident of the Kanawha Valley.

References: County Records; West Virginia Adjutant General, *Report*, 1864, p. 681; and Family Traditions.

HARRISON, THOMAS WILLOUGHBY (October 28, 1824-November 1, 1910), delegate from Harrison County and son of Judge William A. Harrison, was born at Clarksburg. He was educated in Randolph Academy; read law with his father; and was admitted to the bar at the age of twenty-one. He was an ardent opponent of secession and was an active member of the Convention. His father was one of the first judges of West Virginia's Supreme Court of Appeals, and Thomas Willoughby succeeded him as judge of the circuit composed of Marion, Harrison, and Barbour counties. With its name changed to the Fourth Circuit and Randolph County added, he retained this position until January 1, 1873, when he was succeeded by Charles S. Lewis.

October 30, 1848, Thomas W. Harrison married Mary Platt Robertson, sister of Julia Augusta Robertson who six years later married Francis H. Pierpont. The Harrison home, "Broad Oaks," was famous for its attractiveness and hospitality. The Harrisons were active members of the Presbyterian church.

References: Atkinson and Gibbens, *Prominent Men*, p. 443; C. H. Ambler, ed., Siviter, *Recollections of War and Peace, 1861-1868*, p. 371.

HAYMOND, HIRAM (1806-December, 1863), delegate from Marion County in the regular session, was a son of William and Cyntha (Carroll) Haymond. He was born in Palatine, Monongalia County, now Marion County, of parents who formerly resided at Rockville, Maryland. January 14, 1829, he married Margaret Wilson of Harrison County, Virginia. When the War of Secession began, he was a farmer and merchant at Palatine. Through extensive business activities he became involved for a large amount, and in 1862, following the adjournment of the regular session of the Convention, he moved to Champaigne, Illinois. His creditors were allowed to recoup themselves through judgments against his abandoned property. Following the war Mrs. Haymond returned to Fairmont, where she made her home on the present site of "Sonnencroft." Hiram Haymond was a pronounced nationalist who believed that the states should have the same relation to the Federal Government that counties held to the states. His remains repose in Mount Hope Cemetery, South End, "Lot 38-B 14," Champaigne, Illinois.

References: Marion County Records; Mount Hope, Illinois, *Cemetery Records.*

HERVEY, JAMES (March 29, 1819-May 1, 1888), delegate from Brooke County and a son of David and Dorothy (Ferris) Hervey, was a scion of a distinguished family which first settled in present West Virginia at Wellsburg in 1772. Henry Hervey, its founder, came direct from Ireland. Soon after his arrival he married Margaret Hutchinson, also an Irish immigrant. They were Presbyterians and their sons, James, Henry, and David, distinguished themselves as ministers of that sect. One of these sons, David Hervey, father of the subject of this sketch, founded the Presbyterian Church in present Wellsburg, West Virginia.

James Hervey was born in Ohio. Little is known of his education, but in due time he established himself as a lawyer in Wellsburg, where he rose to distinction in his profession. He was three times prosecuting attorney of Brooke County. He was active in the Convention. From 1868 to 1871 inclusive, he was a delegate from Brooke County in the West Virginia Legislature. He married Nancy Smith, daughter of Edward Smith, a prominent physician who from 1851-1855 represented Brooke County in the Virginia General Assembly. To this union nine children were born. The sixth child, Henry C. Hervey, read law with his father and, following in his footsteps, distinguished himself as a lawyer in his home town.

References: Brant and Fuller, Publishers, *History of the Upper Ohio Valley* (Madison, Wis., 1890), pp. 619-620.

HOBACK, JOHANIS P. (September 13, 1836-February, 1863), delegate from McDowell County, was born in Floyd County, Virginia. In 1854 his parents moved to Beaver Creek, near the present site of the town of Beaver, Raleigh County, West Virginia. Johanis Hoback was well educated for his day and was "a good school teacher." In defiance of her father, James (Old Squire) Cook, he on May 21, 1861, married Mary Martha Cook who bore him twins who died in infancy. Hoback was admitted to membership in the Convention at the same time and in the same manner as Richard M. Cook. He died either at Wheeling or on his way home from the recalled session and was buried at Marmet, or Brownstown, the then head of steamboat navigation on Kanawha River. About this time his family moved to Gallia County, Ohio. Later his widow married Thomas B. Cook of Raleigh County, West Virginia. She died August 15, 1930, at Damron, Raleigh County, West Virginia.

References: Family Records; Raleigh County Records; and Convention, *Journal*.

HUBBS, JOSEPH (November 30, 1806-March 12, 1879), delegate from Pleasants County, was a merchant in St. Marys. He was born in southwest Pennsylvania. Through thrift and investments in government securities, he effected savings which were invested in real estate. In the secession crisis he was an ardent supporter of the Union, and, although he was not heard as an orator or debater, his influence was effective. He married Joanna Ambler, to which union four children, all girls, were born. They were: Jennie; Sarah who married Christian Schauwecker; Barbara who married Job Smith; and Joanna who married Charles W. Bills, all of Pleasants County.

References: Family traditions; Grave Marker, St. Marys, West Virginia.

IRVINE, ROBERT (October 2, 1804-August 14, 1875), delegate from Lewis County, was a native Virginian who immigrated to northwest Virginia from Bedford County about 1850. He owned much of the site of Weston and several tracts of wild land in different parts of Lewis and other counties. He was tall and slender, wore a shawl over his shoulders, and walked with a staff. During most, if not all, of his residence in Weston he lived at the "Bailey House." "Aunt Jane Grigsby" did his washing for $2.00 per month, which was paid twice a year. He never married and died intestate and without a relative in West Virginia. His estate was distributed among his nephews and nieces who resided in Virginia, North Carolina, South Carolina, and other southern states. He died at Weston and was buried in Hill Cemetery.

Robert Irvine took an active part in the Convention and seems to have been a mentor to a number of its less competent delegates. May 28, 1863, he was elected judge of the Fifth Judicial Circuit of West Virginia and served in that capacity until January 1, 1873, when he was succeeded by John Brannon. Irvine's estate was administered by Henry Brannon of Weston.

References: Lewis County Records.

LAMB, DANIEL (January 23, 1810-April 21, 1894), able lawyer and delegate from Ohio County, was the son of a shoe cobbler and harness maker. He was born at Connellsville, Pennsylvania, of parents who had previously resided in Eastern Shore, Maryland. They were Friends, but Daniel became an Episcopalian. In 1823 his parents moved to Wheeling, Virginia, where he continued his education in the public schools. Studious and precocious from childhood, he was able to go far with his self-directed education. At the age of twenty he was clerk of his adopted city; one year later he was made secretary of a fire and marine insurance company; and from 1834 to 1837 he was secretary and treasurer of the Wheeling Savings Institute. Meanwhile he had studied law. He was admitted to the bar in 1837, at which time he formed a partnership with Charles W. Russell, a brilliant lawyer and successful politician. Lamb rose rapidly to prominence in his profession. At the same time he was cashier of the Bank of Northwestern Virginia.

From beginning to end of the Whig party, Daniel Lamb adhered to its principles, but he was not active until it became necessary, as he thought, to take a stand against secession. He was a member of the First and Second Wheeling conventions and was chairman of the Constitutional Convention committee on the legislative department. From 1863 to 1870 he was a delegate in the West Virginia Legislature. In 1863 he was appointed to codify the laws of the new State, but completion of the work was left to others. The resulting code is, however, known as the "Lamb Code." Its author is yet known as the "Code Maker." In 1871 he was the Republican nominee for election to the United States Senate. He was defeated by Henry G. Davis. Lamb was frequently mentioned as a suitable person for membership on the State Supreme Court of Appeals, but he declined to permit the use of his name as a candidate.

In 1837 Lamb married Maria M. Clark, daughter of John Clark of Belmont County, Ohio. Three children, one son and two daughters, were born to this union. For a long time the son was cashier of the Bank of Wheeling and was known as an able financier.

References: Atkinson and Gibbens, *Prominent Men*, pp. 255-258; Brant and Fuller, Publishers, *History of the Upper Ohio Valley*, pp. 355-356; Wheeling *Intelligencer*, April 22, 1894.

LAUCK, RICHARD W. (1812-August 18, 1892), delegate from Wetzel County and an exhorter in the Methodist Episcopal church, was born in Brooke County, Virginia, son of Simon and Mary Lauck. He married Julia Wilson of Morgantown, to which union five children, Martha, Katharine, Agnes, Mary, and Edgar, were born. About the time of the formation of Wetzel County in 1846, he moved to New Martinsville, where he practiced law for about thirty years. From January 27, 1860, he was for a short time prosecuting attorney of his adopted county. He was not active in the Convention and voted generally with the minister delegates. During his declining years he gave most of his time to the Christian ministry. A family tradition has it that his son, Edgar, was the youngest soldier from Wetzel County in the Union army. About 1888 he and his father moved to Fairmont, West Virginia, where the latter died and was buried in Maple Grove Cemetery. His wife died February 23, 1896, at the age of eighty-four, and was buried by the side of her husband.

References: Marion County Records; Fairmont *Times*, January 24, 1926; *Ibid.*, January 25, 1926.

MAHON, EDWARD SPENCE (1816-December 27, 1893), delegate from Jackson County, was born in Maryland. The original spelling of his name was McMahon which tells something of his origin. Early in life he moved to Pennsylvania, where he was a bus driver. About the middle of the last century he and his two brothers moved to Jackson County, (West) Virginia, after a brief sojourn in Brooke County of that state. In the secession controversy he was an ardent supporter of the Union. From 1863 to 1867 inclusive, he was a senator in the West Virginia Legislature. He represented Jackson County as a delegate in the Sixth and Seventh legislatures (1868-1869). In his later years he was not active politically. His passing is noted in the records of the Masonic Lodge of Ravenswood, West Virginia, in these words: "E. S. Mahon, old and decrepit, wandered from the lodge room and festal board on December 27, 1893, and mysteriously disappeared. His body was recovered from the Ohio River on May 22, 1894, and given due Masonic burial."

References: Convention, *Journal;* Masonic Records, Ravenswood, West Virginia.

MANN, ANDREW WASHINGTON (November 16, 1833-February 27, 1910), delegate from Greenbrier County in the recalled session, took his seat February 14, 1863. He was born near Salt Sulphur Springs, Monroe County, and educated in the schools of that county, but he spent most of his life in Greenbrier County and was buried in White Oak Cemetery. He was a member of the Methodist Episcopal Church. He was married and had four children: Nellie, Bessie, Ann, and Myrtle.

From April to July, 1861, Captain Mann was a train master in the Union army. At the end of this service he raised a company of home guards which functioned as needed. He was a delegate in the First West Virginia Legislature and again from 1867 to 1869 inclusive, where he voted for the ratification of the Fourteenth and Fifteenth amendments to the Constitution of the United States. Beginning April 5, 1869, he was for a time Collector of Internal Revenue for the Third West Virginia District. In 1870 he was appointed a regent for the State School for the Deaf, Dumb and Blind at Romney.

References: Atkinson and Gibbens, *Prominent Men*, pp. 535-536.

McCutchen, John Rogers (1810 - June 15, 1880), delegate from Nicholas County, was seated January 11, 1862, at the request of one hundred fifty-nine petitioners. He was born at Mt. Cove, now Victor, Fayette County, West Virginia, but he did not know the date of his birth other than the year. During a large part of his youth he was employed by Clement Vaughan who kept a tavern and general store. He received little education, except of a practical kind. When he reached manhood he moved to Kesslers Cross Lanes in the adjoining county of Nicholas, where he was employed by John R. Vaughan, married Sallie Kessler, acquired a farm of two hundred acres, and resided during the rest of his life as a successful farmer and a mechanic. The names of his children were: Henry, Rufus, Elizabeth, Bina, Allen, Lucy, Nannie, Newton, John L., and Sally. After the death of his first wife he married Lucy Ann Thurmond of Fayette County, but no children were born to this union.

From September 26, 1840, until his death, McCutchen was associated with Zoar Baptist Church at "Cross Lanes," Nicholas County. September 25, 1841, he was elected clerk of the Zoar congregation, which position he held until his resignation in September, 1852. He served his church also as treasurer and deacon, in which latter capacity he was well and favorably known as an exhorter. February 6, 1862, he opened the session of the Convention with prayer. He was known as "Honest John McCutchen, who's word is as good as his bond." He was buried by the side of his first wife in Zoar Cemetery.

References: Records of Zoar Baptist Church, Nicholas County, West Virginia.

Montague, Dudley Street (August 26, 1800-January 31, 1886), delegate from Putnam County, was born in Cumberland County, Virginia, of English parentage. March 22, 1821, he married Elizabeth, daughter of John Brooks of Fluvanna County, Virginia, who bore him ten children. About the time of this marriage he made a permanent residence at Red House Shoals, Putnam

County. His wife died January 28, 1866, and on July 24 of that year, he married Mary Keeney who bore him seven children. The Montague children were: John R., William J., George R., Sarah H., Robert W., Thomas H., Peter C., Martha J., Albert G., Francis M., Dudley S., Jr., Daniel W., Charles B., Joseph D., Lewis C., Claudius H., and Earl B. Most of the fifteen boys grew to manhood and were the progenitors of numerous families residing in the Ohio Valley and to the westward. Thomas H. Montague piloted the "Fashion" in a sensational accident near Natchez, Mississippi, which was commemorated in a popular poem entitled, "I'll Hold her Till She Strikes the Shore."

Beginning about 1850 and for some years thereafter, Dudley S. Montague, Sr., kept a hotel at Red House Shoals. Prior thereto he had been a county commissioner of revenue. In June, 1856, he was named assessor of Putnam County; March 3, 1857, he was appointed county escheator; August 23, 1858, he was commissioned a notary public. He was active in the Convention and personally conducted the poll of General Lightburn's soldiers on the Willey Amendment, in their trenches before Vicksburg, Mississippi. During his later years he was a justice of the peace and was known as "Squire Montague." About a year before his death, he joined the Methodist Episcopal church. His remains were interred near his Putnam County home, but were later removed to Spring Hill Cemetery, near Charleston, West Virginia.

References: Montague Family Records; Putnam County Records.

O'BRIEN, EMMET JONES (May 14, 1819-February 17, 1888), delegate from Barbour County, was a son of Daniel and Hannah (Norris) O'Brien. He was born in Beverly, Randolph County, and was of the second generation of his family in America. His father emigrated to America in 1796. After eight years as a merchant in Baltimore, Maryland, he became a merchant in Beverly, (West) Virginia. His son, Emmet J., Jr., was a stonecutter and a stone mason, who, together with his brother, Daniel O'Brien, built the abutments for the wooden bridge which spans Tygart River at Philippi, and for a bridge of the same construction which spans the Buckhannon River near its mouth. Before the War of Secession, he had been commissioned a brigadier general of militia. Unlike most Virginia militia officers, he opposed secession and took an active part in the formation of West Virginia. He was later a senator in her Fourth and Fifth legislatures.

Like most of those responsible for the formation of West Virginia, O'Brien was a member of the Methodist Episcopal church.

He was also a Democrat. While yet a young man, he married Martha Ann, daughter of Jonathan and Elizabeth (Reger) Hall of Big Skin Creek in present Lewis County. To this union were born four children: Alonza Lee; Daniel U. who married Mellie Whiting, daughter of Samuel Whiting of Glenville, Gilmer County; Mary Lillian who married William M. Arnold of Gilmer County; and William Smithe who married Emma White of Lewis County, was a representative in the Seventieth Congress, and has since March 4, 1933 been secretary of state of West Virginia.

References: O'Brien Family Records; Barbour County Records.

PARKER, GRANVILLE (January 18, 1809-May 10, 1881), delegate from Cabell County, was born in Clamsford, Massachusetts, and educated in the schools of that state. An active mind and a good cultural background made possible his admission to the bar with only a reading knowledge of law. He practiced his profession first at Lowell and later at Worcester, Massachusetts. While Eli Thayer was trying to establish a settlement at Ceredo, Wayne County, (West) Virginia, Parker came to Guyandotte in present Cabell County to represent the Guyandotte Land Association. In 1861 he helped to organize the Cabell County Petroleum Company. About 1840 he had married Eliza, daughter of Philip True of Portland, Maine, who bore him two daughters who were gifted writers.

When the war began Parker was sojourning in Cabell County. He had openly opposed secession and expressed sympathy with efforts then being made at Wheeling to reorganize the government of Virginia on a loyal basis. For these activities General Jenkins ordered his arrest. He escaped and soon thereafter joined the new state constitution makers at Wheeling. More than anything else his presentation of the probable effects of the inclusion of Alleghany County upon the indebtedness of the proposed state resulted in the decision not to include that and neighboring counties. As a newspaper correspondent, Parker did more than any other one person to keep the new state movement before the country at large. In 1875 his collected articles on the West Virginia statehood movement and kindred subjects were published at Wellsburg, West Virginia, in a book entitled, *The Formation of West Virginia and Other Incidents in the Civil War*. He died at Wellsburg, West Virginia, and was buried there.

References: Atkinson and Gibbens, *Prominent Men*, pp. 816-818; Wellsburg *Herald*, May 11, 1881.

PARSONS, JAMES WILLIAM (January 13, 1813-February 1, 1892), delegate from Tucker County, was born in the Horse Shoe, then a part of Randolph County, on a farm patented by his grandfather, and for the last forty years the County Farm of Tucker County. He was the son of Dr. Solomon (1795-1875) and Hanna Parsons. After graduating from New York City Medical College, Dr. Solomon Parsons became the first physician in present Tucker County. He was a Whig and a devout Methodist. Sometime before the war he freed his slaves and in 1863 moved to Terra Alta, Preston County, where the political, as well as the physical, atmosphere was to his liking. He was a member of the Second Wheeling Convention.

May 19, 1832, James W. Parsons, subject of this sketch, married Catherine A., granddaughter of General John Neville of the American Revolutionary Army. Nine children were born to this union. Following his first wife's death on February 22, 1858, Parsons on May 17, 1859, married Ann Eliza Prentiss who bore him no children, but was responsible for changing his church affiliation from Methodist to Presbyterian. After the example of his father, James W. Parsons was a Whig and became an ardent Republican. Shortly after West Virginia was admitted to statehood, he moved to Kingwood, Preston County, where he was later elected a justice of the peace and was familiarly known as "Squire Parsons." For many years he was chairman of the Republican Executive Committee of Preston County. He was buried at Kingwood.

References: Hu Maxwell, *History of Tucker County, West Virginia* (Kingwood, West Virginia, 1884), pp. 17-33; Virginia Parsons McCabe, *The Parsons Family History and Records;* Tucker County Records.

PAXTON, JAMES WILLIAM (August 21, 1821-November 2, 1896), delegate from Ohio County, was born in Wheeling and educated at Jefferson College, Canonsburg, Pennsylvania, and Bacon College, Georgetown, Kentucky. Though educated to be an engineer, he in 1839 entered the wholesale grocery business in Wheeling with his father. After a few years his father died and he associated with himself his cousin, E. W. Paxton, under the firm name of "J. W. Paxton and Company." In 1854 he retired from business and devoted himself for the three succeeding years to settling the estate of his father-in-law, Archibald Paul of Greenup County, Kentucky, who had maintained there a large iron manufacturing establishment. Meanwhile Paxton was made a director in the Northwestern Bank of Virginia and served as a member of the city council of Wheeling. He spent the summer of 1857 in Europe and in 1860 was elected president of the Northwestern Bank of Virginia which he, in 1863, helped to convert into the first national bank in West Virginia. Because of impaired health he in 1867 resigned the bank presidency and moved to Philadelphia. His health having been restored, he in 1878 returned to Wheeling.

Though a slave owner, James W. Paxton actively opposed secession and had a prominent part in establishing the Reorganized Government of Virginia. He was a member of the First and Second Wheeling conventions and for a time served as a member of Governor Pierpont's council. He was chairman of the committee on finance and taxation in the Convention and was one of the commissioners to carry on during the interim between the making of the new state constitution and her admission to separate statehood. Political preferment in the new State was within his reach, but he declined it.

James W. Paxton was twice married. His first wife was Catharine Mason, third daughter of Archibald Paul, whom he married in 1845. Seven children were born to this union, but none of them survived their father. In 1872 he married Frances Joan, second daughter of Samuel Logan of Washington County, Pennsylvania. Three children, two sons and a daughter, were born to this union.

References: J. H. Newton, G. C. Nichols, and A. G. Sprankle, *History of the Pan-Handle* (Wheeling, W. Va., 1879), p. 255; Greater Wheeling and Vicinity, Vol. II, p. 560.

PINNELL, DAVID STUART (June 9, 1812-August 31, 1885), delegate from Upshur County in the recalled session to fill the vacancy caused by the resignation of the Rev. Richard L. Brooks, was a native Virginian. Before making his residence in Upshur County he lived in Greenbrier County and perhaps also in Pocahontas County, (West) Virginia. He married Katharine Wolfenberger (August 22, 1811-April 16, 1873) who, according to a family tradition, was born in Germany. She bore him eight children, six boys and two girls. Following in the footsteps of their father, three of these boys, Philip F., David S., Jr., and George M., were physicians. Another son was a merchant in Buckhannon, West Virginia.

In addition to being a physician, David S. Pinnell was a licensed exhorter in the Methodist Episcopal church. He was also a farmer, a storekeeper, and a mill owner. When the War of Secession began he was sojourning in the West and was for a time apprehensive regarding the safety of West Virginia, particularly Upshur County. When he learned that "Little Massachusetts" (French Creek) was on the warpath, he felt that all would be well. He was later assistant surgeon in the Third West Virginia Cavalry, but on April 22, 1864, he resigned his commission to become a delegate in the West Virginia Legislature, where he served continuously from 1865 to 1869, inclusive. He was speaker of the House in the Fourth and the Fifth legislatures. April 21, 1869, he was appointed consul to Melbourne, Australia, to succeed Colonel George R. Latham, also a resident of Buckhannon, West Virginia, and served until February, 1871.

Dr. Pinnell's public activities were not wholly political and military. He was interested also in education. From about 1847 he was for a number of years a trustee of the Buckhannon Male and Female Academy. He was also one of the founders of the West Virginia Medical Association. Following the death of his first wife, he married Isabella Timberlake of Clarksburg, West Virginia, where he spent his last years. He died in the home of his son, Dr. Philip F. Pinnell, in Buckhannon. He is buried in Leonard Cemetery, Buckhannon, West Virginia.

References: Upshur County, West Virginia, Records; Pinnell Family Records.

POMEROY, JOSEPH SEMPLE (December 26, 1821-August 26, 1906), delegate from Hancock County, was a son of John and Jane (Porter) Pomeroy. He was born in Lawrence County, Pennsylvania, and educated at Washington College, Pennsylvania, and the Western Theological Seminary. In 1849 he was licensed to preach by the Beaver Presbytery and the following year began his ministry at Fairview (Pughtown), Hancock County, (West) Virginia, where he remained until 1871. For a time thereafter, he filled no regular station, but beginning with 1877 he served a church in Moundsville, West Virginia, for one year. From 1878 to 1886 he was a "supply" located at Cameron. Following the termination of his services there, he returned to Fairview, where he was active until the time of his death. He preached on the day he died.

The Rev. Pomeroy was active in the Convention and was especially interested in education. For years he was a member of the school board of his magisterial district in Hancock County, and is said to have been partial to Republican teachers. Teachers who applied to him personally, after a custom of the time, were examined to determine their fitness. As a rule he had two questions. The applicant was asked to spell "Abakadazra" and to explain to Pomeroy's satisfaction which side was right in the "War of the Rebellion." As a gesture to his profession, but also as a tribute to his scholarship and pleasing personality, he was presented with the gold pen used to make the final draft of the First Constitution of West Virginia.

References: James B. Rogers, *History of the Washington Presbytery* (Philadelphia, 1889), Pomeroy Family Traditions.

POWELL, JOHN MORGAN (August 16, 1825-August 16, 1894), delegate from Harrison County, was a native Virginian. He was active in the Convention and more than any other delegate was responsible for the provision of the new state constitution which gave its legislature authority to regulate and prohibit the sale and manufacture of intoxicating beverages. At the time he was stationed at Buckhannon, Upshur County.

In 1854 Powell was admitted to the Western Virginia Conference of the Methodist Episcopal church, as a preacher on trial, and stationed at Palatine, Marion County. In the course of the next seventeen years, he served charges at Blacksville, three years; Elizabeth, one year; Lumberport, one year; West Milford, two years; Buckhannon, two years; Morgantown Circuit, three years; Oakland, Maryland, three years; and Hartford City, two years. For four years, beginning in 1872, he was presiding elder of the Charleston District. In 1876 he was returned to Hartford as resident minister, but before his assignment expired, he, on March 17, 1877, left West Virginia for Neosho County, Kansas, where he preached and farmed until near the time of his death.

The Rev. Powell was accompanied to Kansas by his wife, seven sons, two daughters, and one daughter-in-law. Another daughter, Belle, died in present West Virginia and was buried at Hartford City. The remaining children grew to manhood and womanhood, and most of them became prominent residents of Kansas. The Rev. Powell was buried in Mount Hope Cemetery, Galesburg, Kansas. His wife died December 31, 1927, and was buried by his side. A window in the Galesburg Methodist Church was dedicated to their memory.

References: "Records," West Virginia Conference, Methodist Episcopal Church; Powell Family Records; Mount Hope Cemetery, Galesburg, Kansas, Records.

ROBINSON, JOB (1816-?), delegate from Calhoun County, was the son of William Robinson. He was born in Barbour County, (West) Virginia, member of a family which had immigrated from New Jersey by way of Brownsville, Pennsylvania. Sometime before the Civil War, William Robinson moved to Sycamore Creek, Calhoun County, where his neighbors were Polings, Hathaways, and Proudfoots. All were members of the Methodist Episcopal Church and worshipped at Pleasant Valley, now Sycamore Methodist Episcopal Church. This edifice stands in a secluded spot about nine miles from Grantsville, Calhoun County.

While the war was still in progress or near its close, Job Robinson and his brother, James E. Robinson (August 2, 1826-November 9, 1908), moved to Van Buren County, Iowa, where James E. reared a family and Job died childless and now lives only in the memory of his nearest and oldest relatives. Other members of the Robinson family remained in West Virginia, where they died and were buried in Sycamore Cemetery, Calhoun County. Something of their influence is attested by the fact that the magisterial district in which they lived, was named for General Sherman. These Robinsons were of the same family as Judge Ira E. Robinson of Grafton, West Virginia, and of the late Sherman Robinson of Harrisville, Ritchie County, West Virginia. James E. Robinson had a son named Waitman, for Waitman T. Willey, one of the fathers of West Virginia.

References: Robinson family traditions; Calhoun County Records.

ROSS, ANDREW FINLEY (September 17, 1813-February 8, 1876), delegate from Ohio County in the recalled session, was born in Westmoreland County, Pennsylvania. He attended the public schools of that county and Washington (Washington and Jefferson) College. He was graduated in 1838 from Franklin College, New Athens, Ohio. After reading law with John A. Bingham at Cadiz, Ohio, he was admitted to the bar. In 1840 he accepted the chair of ancient and modern languages in Bethany College, Bethany, (West) Virginia, which position he held for seventeen years. In 1857 he accepted the principalship of West Liberty Academy, West Liberty, (West) Virginia, which he resigned in 1861 to fight the secession movement.

Defeated in his efforts to prevent the secession of Virginia, "Professor" Ross supported actively the new state movement in northwest Virginia. As a result of a spirited contest with state rights and anti-Lincoln leaders, he was elected a delegate to the Convention to succeed the Rev. Gordon Battelle, deceased. Ross was later a delegate in the First West Virginia Legislature, where he had a prominent part in launching her free public school system. Together with other civilians, he tried to prevent General John H. Morgan from raiding Ohio and was present when Morgan was captured at Yellow Creek, Ohio.

At the close of the war, Professor Ross established himself on a farm at Fredericktown, Ohio, but after one year he accepted the presidency of Oskaloosa College, Oskaloosa, Iowa, which position he retained for four years. He then accepted the presidency of

Franklin College, New Athens, Ohio, which he retained until his death. As most of his descendents answered the call of the West, little is known of the family in West Virginia.

References: Ross Family Records; Convention, *Journal;* Wheeling *Intelligencer*, February 5-9, 1863; C. C. Regier, editor, *West Liberty Yesterday and Today*, pp. 83-86, 125.

RUFFNER, LEWIS (October 1, 1797-November 19, 1883), delegate from Kanawha County, was, according to some authorities, "the first white child born in Charleston," West Virginia. He was a son of David and Ann (Brumbrach) Ruffner and was born in the old Fort Lee building, located on the present corner of Brooks and Kanawha streets. He was educated in Charleston under the tutelage of Herbert P. Gaines, Levi Welch, and others; in Scott County, Kentucky; at Lewisburg, (West) Virginia, where he came under the influence of the Rev. John McElhenney; in Cincinnati, Ohio; and in Washington College, Lexington, Virginia. In 1818 he returned to Charleston, where he taught school one year. He was a brother of the Rev. Dr. Henry Ruffner, one of the first teachers in Mercer Academy in Charleston, (West) Virginia, later president of Washington College (now Washington and Lee University, Lexington, Virginia), and author of the famous "Ruffner Pamphlet."

In 1820 Lewis Ruffner became a salt manufacturer and toward the middle of the century was generally regarded as the most successful and experienced salt maker in the Kanawha Valley. He was among the first operators to use coal as a fuel. In 1825 he was elected a delegate in the Virginia General Assembly and served continuously for two one-year terms. In 1828 he was appointed a justice of the peace for Kanawha County and served continuously until 1845, when he moved to Louisville, Kentucky, as the agent of his Kanawha salt interests. After his return to Charleston in 1857 he maintained his detachment from public affairs, but the Virginia secession movement aroused him in behalf of the Union. He was a member of the Second Wheeling Convention, a delegate in the general assembly of the Virginia Reorganized Government at Wheeling, and a delegate in the First and Second West Virginia legislatures. His loyalty to the Union and his enthusiasm for West Virginia were best shown through his military activities. Largely because of his effectiveness in this service, he was commissioned by Governor Francis H. Pierpont a major-general of militia. About the same time he was offered a similar appointment in the Federal Army, but he declined it because of his extensive business interests in the Kanawha Valley.

Lewis Ruffner was twice married: First, on November 2, 1826, to Elizabeth Shrewsbury of Kanawha County; second, December 3, 1843, to Viola Knapp of Vermont. By his first wife he had two daughters, Elizabeth and Henrietta, and one son, David Henry. By his second marriage he had one daughter, Madalein and a son, Ernest H. Ruffner, who was a successful army engineer and was for a time in charge of lock and dam construction on the Kanawha River. About 1842 he became a member of Kanawha Salines Presbyterian Church at Malden, then under the ministry of the Rev. Dr. Stuart Robinson of Kentucky. He remained an active member until his death. He was buried near his old home at Malden, West Virginia.

References: W. S. Laidley, *History of Charleston and Kanawha County West Virginia* (Chicago, 1911), p. 52; Geo. W. Atkinson, *History of Kanawha County* (Charleston, 1876), pp. 303-305; Atkinson and Gibbens, *Prominent Men of West Virginia*, p. 332.

RYAN, EDWARD WINSTON (October 28, 1837-November 25, 1916), delegate from Fayette County to succeed Captain James S. Cassady, resigned, was a native of that county. He was educated in its schools and in Allegheny College, a Baptist controlled institution at Blue Sulphur Springs, Virginia. Although the Rev. Ryan was one of the youngest delegates in the Convention, he was already a school-teacher of experience. In 1861 he entered the ministry of the Methodist Episcopal church, as a junior preacher on the Nicholas circuit in present West Virginia. After serving Malden and Point Pleasant circuits, he was stationed in turn at Catlettsburg (Kentucky), Hartford City, Charleston, Wheeling, Morgantown, Charleston (a second time), and Grafton. From 1883 to 1887 he was presiding elder of the Wheeling district. He was then transferred to Tabernacle Church, Detroit, Michigan, where he filled other pastorates, among them one at Ypsilanti. For a time he was presiding elder of the Ann Arbor district. He was a noted evangelist whose zeal for the Christian ministry caused him to make two trips to the Holy Land.

The Rev. Ryan was twice married: First, (May 8, 1866) to Susan Cherrington of Gallipolis, Ohio, who bore him four children, and second, to Charlotte Hance who bore him two children. Mary Ryan, his eldest daughter by his first wife, is a divorced wife of the late Senator Royal S. Copeland of New York. The Rev. Ryan died in Detroit, Michigan, and was buried in Grand Lawn Cemetery in that city.

References: Atkinson and Gibbons, *Prominent Men*, p. 599; Ryan Family Records; Geo. W. Atkinson, *The West Virginia Pulpit*, pp. 110-112.

SHEETS, GEORGE WASHINGTON (September 23, 1824-August 12, 1900), delegate from Hampshire County and a son of Michael Sheets, was born at Charles Town, (West) Virginia. With only six months schooling he became a mechanic and helped to build the bridges of the Cumberland and Pennsylvania Railroad between Piedmont and Cumberland. Under commission from Governor Pierpont, he was active in recruiting militia for the defense of the Baltimore and Ohio Railroad. He was a delegate from Hampshire County in the First West Virginia Legislature and, after his removal to Westernport, Maryland, he was for twenty years a justice of the peace in that state. In politics he was a Democrat.

September 23, 1847, George W. Sheets married Eleanor Matilda Beales, to which union were born ten children: John, March 21, 1848; Anna Conrad, March 9, 1850; George David, August 2, 1852; Clara Virginia, January 8, 1855; Margaret Matilda, October 8, 1857; Samuel Davis, February 28, 1860; Mary Elizabeth, June 5, 1862; Charles Sheridan, September 30, 1864; Cornelius Slack, July 26, 1867; and Edgar, May 7, 1870. Of these Mary Elizabeth (Miss Mollie) alone (1941) survives. Although he attended the Presbyterian church and was for years a superintendent of a Sunday school in Piedmont, West Virginia, George W. Sheets was not a member of any church. He belonged to the Philos Lodge No. 91, I. O. O. F., of Westernport, Maryland, and was buried in Philos Cemetery of that town.

References: Sheets Family Records; Convention, *Journal.*

SIMMONS, JOSIAH (March 15, 1814-April 20, 1885), delegate from Randolph County, was born in Fairfax County, Virginia. About 1855 he bought the Stagle farm of about five hundred acres near present Elkins, West Virginia, where he resided for a time. He was a local preacher of the Church of the Brethren, a German Baptist sect, to which he on March 19, 1860, deeded a site for a church building in or near present Kerens, Randolph County.

When the War of Secession began Simmons owned about a thousand acres of land in Randolph County and was engaged in farming and merchandising. He opened five of the daily sessions of the Convention with prayer and was referred to in the *Journal* as the "Rev. Simmons." Like other delegate exhorters, he was not listed as a minister. Shortly after the war he sold his lands in West Virginia and moved to Salem, Virginia, where he died and was buried. His wife, Melvina H. Simmons (March 27, 1831-January 10, 1927), was buried in the same lot in East Hill Cemetery, Salem, Virginia.

References: Randolph County Records; Salem, Virginia, East Hill Cemetery Records.

Sinsel, Harmon (December 13, 1817-May 9, 1897), delegate from Taylor County, was the third son of Elijah and Elizabeth (Burdett) Sinsel. His grandfather, John Sinsel, founder of his family in America, came to the New World as a Hessian soldier in the employ of the British. He was captured and taken to Western Virginia, where he married and settled in Fauquier County to pursue his trade of mechanic and millwright. About 1810 he moved to a site near present Pruntytown, Taylor County, West Virginia.

The subject of this sketch was born on his father's farm in present Taylor County, West Virginia, and was educated at Rector College under the direction of the Rev. Charles Wheeler. Following a natural bent for things mechanical, he became an expert cabinetmaker and builder. As such he remodeled the courthouse of Taylor County, then located at Pruntytown, built the county jail, and conducted a successful business as a general contractor until 1870, when he became a merchant in Pruntytown. He was thus engaged until 1891, when he retired.

Although the public and former public buildings in and about Pruntytown, and private residences as well, still bear marks of Sinsel's handicraft, he was best known for his public activities. He was a Whig and cast his first vote for William Henry Harrison. For several years, beginning with 1844, he was county surveyor of Taylor County; in 1846 he was appointed one of its justices of the peace and held that office for seven years. At the time of the Jones Raid (April 30, 1863), he was a member of the Taylor County home guards. More perhaps than any other delegate, he was responsible for naming the new State West Virginia.

On February 3, 1846, Harmon Sinsel married Mary B. Hurry, daughter of James Hurry of Morgantown, (West) Virginia. Three children were born to this union: Delia A. who married James L. Morris of Chicago, Illinois; Clara Eyster who married Scott W. Martin of West Union, West Virginia; and Leroy S. of Pruntytown, who took over his father's business. The Sinsels were Baptists. Harmon died at Pruntytown and was buried there on "the Hill."

References: Rush, West and Company (Publishers), *Biographical and Portrait Cyclopedia of Monongalia, Marion, and Taylor Counties, West Virginia*, "Taylor County," pp. 25-26.

Smith, Benjamin Harrison (October 31, 1797-December 10, 1887), delegate from Logan County and a successful attorney in

Kanawha and neighboring counties, was born in Rockingham County, Virginia, a son of Benjamin Harrison and Elizabeth (Cravens) Smith. When Benjamin H., Jr., was thirteen years old, his father, a "strong Methodist" and a conscientious objector to slave owning, moved to a farm in Fairfield County near Lancaster, Ohio, where he freed his Negroes and his son worked as a farm hand and spent his leisure in study. In Ohio, as in Virginia, the Smith residence was "the stopping place for all the Methodist ministers who passed that way." In 1815, upon the advice of Thomas Ewing, Sr., Benjamin H. Smith, Jr., enrolled in Ohio University at Athens, from which he was graduated four years later. After a period of tutelage under his adviser in educational matters, Smith was, in 1821, admitted to the bar. Reversing the general trend of his day he, upon the advice of Thomas Ewing, plus an urge to be near the growing salt industry, returned to his native hills for the practice of his profession at Charleston.

Prior to the formation of West Virginia, "Colonel" Smith held positions of honor and trust in Virginia. Beginning with 1833 he was for six years a senator in her general assembly; because of his strong Whig sentiments and his ability, President Taylor in 1849 appointed him district attorney for the Western District of Virginia; he was a member of the Reform Convention of 1850-1851; in 1855-1856 he was a delegate in the general assembly; and in 1862, as the appointee of President Lincoln, who also approved his former Whig affiiliations, Smith again became district attorney of Western Virginia, which position he held until 1867. It has been said of him that he did more than any other person in the Kanawha Valley to keep it loyal to the Union. Although he was not a resident of Logan County, he represented it in the Convention. For years he had practiced at the Logan bar and was thus almost, if not quite, as well acquainted with its people as were any of its residents. In 1866 he was the unsuccessful nominee of the Democrats for governor of West Virginia. In 1870 he was a delegate from Kanawha County in the state legislature. He was a studious lawyer and "stood among the foremost men at the bar."

Colonel Smith married Miss Roxalana Noyes, daughter of Isaac Noyes, a prosperous merchant and salt manufacturer of Charleston, (West) Virginia. Three children were born to them: C. Elizabeth, Isaac Noyes, and R. Emmeline. C. Elizabeth, the eldest, married Frederick H. Brooks and was the mother of four children: Harrison Smith, Frederick Noyes, Morris O., and Lillie R. Brooks. Isaac Noyes Smith married Caroline Quarrier, to which union were born five children: Benjamin H., Harrison Brooks, Elsie Quarrier, Christopher T., and Isaac N. Smith. R. Emmeline Smith married Colonel A. B. Jones and had one daughter, Lana Noyes Jones. Although Colonel Smith claimed to be a Methodist, he attended church with his wife and family who were ardent and faithful Presbyterians. He was buried at Charleston in a grave marked by "a handsome monument."

References: Geo. W. Atkinson, *History of Kanawha County*, pp. 258-265; W. S. Laidley, *History of Charleston and Kanawha County*, pp. 286-288, 949-950; and Atkinson and Gibbons, *Prominent Men of West Virginia*, p. 286.

SOPER, ABRAHAM DICKERSON (September 4, 1796-March 25, 1876), delegate from Tyler County, was born in Orange County, New York, eldest son of William and Eleanor (Dickerson) Soper. For a time he was a law student in Poughkeepsie, New York. Following a period of study in the office of John Anthon of New York City, he began in 1813 the practice of law in Milton, Ulster County, New York, to which his father had moved in or about 1809. In 1822 he was appointed postmaster of Milton. By successive re-elections, beginning in 1823, he served his adopted county as a justice of the peace for a number of years. In 1827 he was a delegate in the New York General Assembly. The following year he became judge of the Court of Common Pleas in Ulster County. In 1835 he moved to New York City, where he was a resident of present Brooklyn and a law partner of George Thompson. He practiced in Brooklyn until 1847, when he moved to Sistersville, (West) Virginia. Here he purchased a large tract of land and continued the practice of his profession.

As a resident of Virginia, making frequent and extended visits to New York City, Judge Soper was a constructive leader in an area suffering from an arrested development. Unlike most of its leaders, he was a Douglas Democrat. He opposed secession and took an active part in the formation of West Virginia. In the absence of John Hall, Soper was elected president of the recalled session. But for protests of his wife who feared that the strain would prove too much for him, Judge Soper might have been the first governor of West Virginia. He declined the honor and suggested Arthur I. Boreman. Soper was a delegate in the Second West Virginia Legislature. Later he was elected judge of a circuit composed of Tyler and neighboring counties, and served it until the time of his death.

Judge Soper was a Universalist. As there was no church of his faith in Sistersville, he and his family attended the Presbyterian church. His obituary notices describe him as retiring in manner and "singularly pure in thought." During his declining years he entertained his friends by driving them about his estate overlooking the beautiful Ohio River. He died in Sistersville and is buried on the hill in the old cemetery which overlooks that town.

References: Brooklyn *Daily Times*, March 27, 1876; Tyler County Records.

STEPHENSON, BENJAMIN LE MASTER (December 10, 1823-April 7, 1871), delegate from Clay County, was born at Enon in present Nicholas County, West Virginia, a son of Colonel John Garner and Charity (Le Master) Stephenson. He was educated in private and subscription schools and was one of the first schoolteachers in Nicholas County. A bent for poetry, particularly that by Lord Byron, enabled him to attain a fine command of good English. He was also a pleasing and forceful speaker. Through his father who served nine terms in the Virginia General Assembly and was in turn assessor, sheriff and clerk of Nicholas County, the son inherited a fondness for things political and for public service.

July 7, 1853, he married Priscilla Ann Forsyth of Nicholas County, who bore him five children: Franklin; Oceola who married James Hamric; Charity; Sherman who married Agnes Legg and had three sons and one daughter; and Byron who died in infancy. For a period they made their home at Enon. About 1858, at the time of the formation of Clay County, (West) Virginia, they moved to Buffalo Creek, in that county. He opposed secession and, following his services as a constitution maker, he organized in November, 1863, the "Clay County Scouts" which he commanded until the end of the war. From 1865 until his death, he was a delegate in the West Virginia Legislature. He was a Democrat and an active member of the Methodist Episcopal church. He died at Buffalo Creek, Clay County, and was interred in the Stephenson burial lot at that place.

References: Stephenson Family Records; Clay County Records.

STEVENSON, WILLIAM ERSKINE (March 18, 1820-November 29, 1883), delegate from Wood County, was born in Alleghany County, Pennsylvania, of Scotch-Irish parentage. While yet a young man, he became a skillful cabinet maker. His literary education came largely through the old time literary society. As "a friend of the workingman," he became prominent in his native county and was elected a delegate in the Pennsylvania Legislature. He had a part in the memorable contest of 1857, which resulted in the election of Simon Cameron to the United States Senate under conditions not wholly favorable to all the participants. Before the expiration of his term as a legislator, Stevenson moved to Valley

Mills, Wood County, (West) Virginia. Here he purchased a farm and resided until 1880, when he moved to Parkersburg.

Although a resident of Virginia, Stevenson was outspoken against the "Slave Power." He was arrested but never tried on a charge of circulating Helper's *Impending Crisis.* He actively opposed secession and was a member of the First Wheeling Convention. He was an active member of the Convention. From 1863 to 1868, when he was elected governor, he was a member of the state senate which he served as president during each session, except the first. He was re-nominated by the Republicans to succeed himself as governor but was defeated by John J. Jacob, a liberal Democrat. Shortly following his term as governor, Stevenson, together with O. G. Schofield, founded the Parkersburg *State Journal* which, as much as any other party organ, paved the way for a new Republican party in West Virginia.

Although reared in the faith of John Calvin, Governor Stevenson was not a member of any church. However, for twenty years he was superintendent of a Sunday school in Valley Mills. He opposed the narrow sectarianism of his day and, partly as a protest against it, donated a building site for a nondenominational church at Valley Mills. Friend and critic alike respected his liberal views. His monument in Riverview Cemetery, Parkersburg, West Virginia, bears this inscription: "He loved the masses, and they revered his memory." A son, Orlando Stevenson, by his wife, Sarah (Clatworthy) Stevenson of Philadelphia, survived him.

References: Atkinson and Gibbens, *Prominent Men;* Parkersburg *Journal,* November 30, 1883.

STEWART, BENJAMIN FRANKLIN (1809-August —, 1892), delegate from Wirt County, was born in the state of New York. While yet a young man, he came to Wood County, (West) Virginia, and on August 26, 1842, married Martha Webb (June 10, 1812-August 9, 1889) who was related to the Gould family of Parkersburg. No children were born to this union. Stewart and his wife were both members of the Methodist Episcopal Church. He was associated with the Goulds in various enterprises. About the time of the first crude oil developments in the Little Kanawha Valley, he moved to Newark, Wirt County. Here he owned and operated a general store. He was also the owner of three building lots. During his declining years, Stewart was a notary public and proprietor of a small business in Newark. The sign over his shop door said "Benj. F. Stewart. Shoes made and repaired. Clocks and Watches repaired and regulated." Both he and his wife were buried in the near-by "Fought Cemetery."

From September 19, 1864, to April 30, 1865, Benjamin F. Stewart was deputy provost Marshal of the First Congressional District of West Virginia, but he continued to reside at Newark. As most of the leading residents of the Newark community were either Confederates or Confederate sympathizers, Stewart's Union activities subjected him to censure and at times to personal danger. From time to time he was suspected of reporting the presence of furloughed Confederates. Out of revenge a group of their sympathizers attacked his store and destroyed his goods. He escaped capture and possible death by secreting himself in the attic of a neighbor's house "until the Rebels went by." The bitterness thus engendered lingers to this day, but it was mitigated somewhat during Stewart's lifetime by his dignity and inspiring personality. He died in Parkersburg in the home of his friend and benefactor, Jonathan Gould.

References: Wirt County Records; Stewart Family Traditions.

STUART, CHAPMAN JOHNSON (January 8, 1820-April 20, 1888), delegate from Doddridge County, was born in Bath County, Virginia. From 1852 to 1861 inclusive, he was prosecuting attorney of Doddridge County, (West) Virginia. He was a member of the Secession Convention and voted against secession, but, as a member of the Second Wheeling Convention, he opposed the dismemberment of Virginia. As chairman of the convention "Committee on a Proper Boundary," he had an important part in determining the present extent of West Virginia. He took an active part in other phases of the convention proceedings.

While Congress was debating the West Virginia statehood bill, Stuart was organizing the Fourteenth (West) Virginia volunteer infantry, of which he was Lieutenant Colonel. In 1863 he was elected judge of the fourth circuit and served in that capacity until January 1, 1873. From 1875 to 1879 inclusive, he was a delegate from Doddridge County in the state legislature. Colonel Stuart was twice married: First, to Elizabeth Lytle who bore him one daughter, Anna R., who married Dr. M. C. Daugherty of Grafton, West Virginia; and second, on January 25, 1858, to Mary Ann Stuart of Highland County, Virginia, who bore him five children: Winfield Scott Stuart, a lawyer in Dodridge County; Agnes, who married George W. Farr; Elizabeth; Theressa; and Douglas Stuart. He died in West Union, West Virginia, and was buried there.

References: Doddridge County Records; Stuart family traditions.

TAYLOR, GUSTAVUS FRIEND (June 27, 1834-October 5, 1915), delegate from Braxton County, was a native of that county and was educated in its schools. At the age of twenty-two he went to Cass County, Missouri, where he remained for two years. He then returned to Braxton County, where he was variously engaged until 1861. About the time of his service as a constitution maker, he was employed in the office of Provost Marshal General Joseph Darr in Wheeling. Under a West Virginia law of 1864, he was in the latter part of that year commissioned captain of the "Braxton County Scouts" and served in that capacity until the end of the war.

For some time after the war Taylor continued his varied activities. From January 12 to December 13, 1865, he was recorder of Braxton County. He was then its superintendent of schools for two years. Then he became owner, editor, and publisher of the Sutton *Mountaineer*. He had meanwhile read law. February 1, 1870, he was admitted to the bar of Braxton County, and from 1871 to 1872, inclusive, was prosecuting attorney of that county. He then engaged in merchandising in Sutton until 1880, when he moved to Wheeling, West Virginia. There he was a merchant until near the time of his death.

References: Atkinson and Gibbens, *Prominent Men*, pp. 944-949; John D. Sutton, *History of Braxton County and Central West Virginia*, pp. 62, 146, 175; Wheeling *Intelligencer*, October 6, 1915.

TICHENELL, MOSES (February 21, 1807-May 23, 1876), delegate from Marion County in the recalled session, was born in Monongalia County, (West) Virginia. At the age of nineteen he was licensed a local preacher in the Methodist Episcopal church. In 1832 he was ordained a deacon and sent to the Middlebourne, Tyler County, Circuit, where he remained two years. In the course of the next twenty-six years he served a number of circuits and stations in present West Virginia, and was for one year (1840) stationed at New Lisbon, Ohio. For four years, beginning with 1851, he was presiding elder of the Clarksburg, (West) Virginia, district; in 1852 he was a delegate to the Methodist Episcopal Church General Conference; during 1855 he was "Conference Tract Agent"; and beginning with 1856 he was for three years presiding elder of the Wheeling district. He then re-entered the pastorate work and for four years was stationed at Triadelphia, Ohio County. Because of rheumatism contracted from exposure as a circuit rider, he was on the "supernumerary" list from 1861 to 1863, inclusive. In the hope of recovering his failing health he moved in 1867 to Rosemond, Christian County, Illinois, where, after a short time he resumed activity as a minister and distinguished himself as an evangelist.

The Rev. Tichenell was typical of the minister leaders who laid the spiritual background out of which West Virginia grew. What he lacked in formal education he made up by native intelligence and retentive memory. To these faculties he brought industry and perseverence. He was thus a leader to reckon with. With him loyalty to his church and the Union went hand in hand. In 1834 he married Miss Elvira Squires who shared his zeal for church and state and contributed to his effectiveness as a popular leader.

References: Wilding, *Promoted Preachers*, p. 29; Marion County Records; Tichenell family traditions.

TRAINER, THOMAS H. (January 20, 1820-April 19, 1891), delegate from Marshall County, was born in Augusta County, Virginia. Although he had little formal education, he was in 1849 licensed as an exhorter in the Methodist Episcopal church. Four years later he began his public ministry. He served successively charges at Lumberport, Monongalia, Fetterman, Marion, Grave Creek, Marshall, Wesley Chapel, Mannington, Benwood, and Blacksville in present West Virginia, and was for a time presiding elder of the Guyandotte District which covered a part of Kentucky. He was chaplain of the Twelfth (West) Virginia infantry organized at Wheeling, August 30, 1862. Following the war he was a delegate in the Third West Virginia Legislature.

Despite a limited education, the Rev. Trainer had an impressive command of good English and was a forceful preacher. He was three times married: First, 1837, to Jane Hart of Beverly, Randolph County, who bore him thirteen children; second, to Erana Loyd; and third, to Elizabeth Tibbs. He was buried by the side of his first wife in Mount Rose Cemetery, Moundsville.

References: Wilding, *Promoted Preachers*, p. 54.

VAN WINKLE, PETER GODWIN (September 7, 1807-April 15, 1872), delegate from Wood County, was one of the ablest delegates in the Convention and more than any other delegate directed its work. He was born in New York City, son of Peter and Phebe (Godwin) Van Winkle. While he was training for the bar he was, in 1831, married to Juliet Rathbone, daughter of Judge W. P. Rathbone. Four years later he moved to Parkersburg, (West) Virginia, where he completed his law studies in the office of General John J. Jackson and was admitted to the bar.

From early manhood Van Winkle was a Whig and interested in internal improvements and the development of natural resources of his adopted state. He was a delegate in the Reform Convention of 1850-51 and about that time became a railroad promoter, interested primarily in the Northwestern Virginia Railroad between Grafton and Parkersburg. On its completion in 1857 he became its president. He opposed secession. As a member of the Second Wheeling Convention, he voted for the dismemberment of Virginia. While he was serving as a delegate in the First West Virginia Legislature he was on August 4, 1863, elected to the United States Senate for the term expiring March 4, 1869. As a senator, Van Winkle refused to sustain impeachment charges against President Johnson. Because of failing health he declined to seek re-election to the Senate at the expiration of his term. A biographer said of him: "No base or private prejudice or unholy passions ever marked or marred his career." The motto of his life was "prudence, patience, and perseverence."

References: *Dictionary of American Biography,* Vol. XIX, p. 219; Atkinson and Gibbens, *Prominent Men,* p. 162; Wheeling, *Daily Intelligencer,* April 16, 1872.

WALKER, WILLIAM (January 21, 1826-December 23, 1899), delegate from Wyoming County, was a son of the Rev. William Walker who cast the only vote for Lincoln in 1860 in Boone County, (West) Virginia. William Walker, Jr., was born near Burlington, North Carolina. June 12, 1845, he married Julieth, daughter of William D. Cook, to which union ten children, three boys and seven girls, were born. The eldest son, James B. Walker, was a member of Company I, Seventh (West) Virginia Cavalry. Because of disturbed internal conditions in Wyoming County, no election was held there either on the dismemberment ordinance or for the election of a delegate to the Constitutional Convention. However, those opposed to secession, through a petition, asked that William Walker, Jr., be permitted to represent their county, and he was accordingly seated on the first day of the regular session.

Walker was a Baptist preacher, but was never active in the ministry. Instead he gave most of his time to the practice of law and to school teaching. He was twice prosecuting attorney of Wyoming County and took an active part in establishing its free public schools. He was buried on Clear Fork, Wyoming County. The headstone on his grave, placed by the Department of War, bears this inscription: "William Walker, Co. G 7th W. Va. Cav." He was discharged from military service on September 20, 1862.

References: War of Rebellion, *Official Records,* Series I, Vol. XII, pp. 116-118; Princeton (W. Va.) *Observer,* June 9, 1938; Convention, *Journal;* Family Records; West Virginia Adjutant, *Report,* 1864, p. 678.

WARDER, WILLIAM WESLEY (November 8, 1821-May 13, 1899), was born at Pruntytown, Taylor County, (West) Virginia. Little is known of his early life, but a family tradition is that he was a cabinetmaker in Weston, Lewis County, (West) Virginia. In 1850 he married Evaline Cornelia Farnsworth, daughter of James Stout and Abigail (Willcox) Farnsworth, and sister of Daniel D. T. Farnsworth, four days (February 27-March 3, 1869) interim governor of West Virginia. Soon after their marriage Warder and his wife moved to a farm near present Troy, Gilmer County, West Virginia. Though he was a regular attendant during each of its sessions, he was not a debater in the Convention. His environmental influences were Methodist Episcopal, but he was a deacon in the Baptist church. After an illness of about fifteen years he died at Troy and was buried there.

References: Family records and papers.

WHEAT, JOSEPH SHAW (March 30, 1803-May 6, 1872), delegate from Morgan County in the recalled session and visitor in the last days of the regular session, was born at Bath, Virginia, now Berkeley Springs, West Virginia, son of William and Elizabeth (Shaw) Wheat. Little is known of his education except that he was a civil engineer. He was too old for military service in the War of Secession, but he was a strong Union supporter. For activity in a lodge of the Union League at Bath, he, together with Aaron Bachtel, Esquire, was captured in February, 1863, and confined in Libby Prison, Richmond, Virginia. He was released in June, 1864, through an exchange. He was a delegate in the First, Second, Fifth, and Eighth West Virginia legislatures and for a time was a justice of the peace in Morgan County.

For several years Joseph S. Wheat and his brother, James Wheat, were tanners at Saint Johns Run in present Morgan County, West Virginia. Joseph was twice married: First to a daughter of Peter and Matilda Dyche, who bore him five children, Elmira, Armenia, Sarah S., Eliza, and Joseph H.; second to Elinor Newbraugh Grove, who bore him six children, Harriet, Henry, Mary, James, John, and Alfred, who grew to manhood and womanhood. His second wife was the daughter of John Grove, a minister in the Methodist Episcopal church.

References: Wheat Family Records; Morgan County Records.

WILLEY, WAITMAN THOMAS (October 18, 1811-May 2, 1900), delegate from Monongalia County and orator of the West Virginia statehood movement, was born in a log cabin near the site of Farmington, in present Marion County, West Virginia. His great grandfather, William Willey, came to Virginia from New Jersey and lived for a time in the Forks of Cheat, Monongalia County. When he was twelve years old, his father moved to a site at the mouth of Paw Paw Creek, near present Rivesville, Marion County. Here beside the beautiful Monongahela, Waitman grew to manhood. Through self-directed efforts and two months in a grammar school taught by a traveling preacher, he mastered the "3 R's." With this preparation he in 1827 entered Madison College, Uniontown, Pennsylvania, where he distinguished himself as a student of Latin and Greek and formed a lifelong friendship with Matthew Simpson, later a power in the Methodist Episcopal church and in federal politics.

From the outset of its formation Willey adhered to the Whig party. He was a member of the Reform Convention of 1850-51 and soon thereafter became a temperance lecturer. His activities in this service developed his natural abilities and account perhaps for his power and influence in northwest Virginia. With the assistance of leaders in the Methodist Episcopal church, he was nominated in 1859 as the opposition candidate for lieutenant governor of Virginia. He was a member of the Secession Convention and on March 4, 1861, made a notable address before it. He opposed secession, but he parted reluctantly with the mother state. On his way home from the Secession Convention he condemned Abraham Lincoln for having precipitated civil war. As a member of the First Wheeling Convention he opposed precipitate action.

Despite Willey's conservative leanings, he was elected to the United States Senate to fill the vacancy caused by the withdrawal and subsequent expulsion of James M. Mason. His term expired March 3, 1863, but on August 4, following, he was elected one of the first Senators from the new State. He served continuously until March 4, 1871. Upon retirement from the Senate, Willey resumed the practice of his profession. However, he took time out to serve as a delegate in the West Virginia Constitutional Convention of 1872. On the death of Captain William S. Cobun, Clerk of the County Court of Monongalia County, Willey was in November, 1882, appointed to the vacancy. He was elected to succeed himself and served in this position until near his death. He is buried in Oak Grove Cemetery, Morgantown, West Virginia.

In 1834, Willey married Elizabeth E. Ray, to which union were born: Mary E., who married Dr. M. D. Casselberry; Sarah B., who married John Marshall Hagans; William P., for many years professor of law in West Virginia University; Julia E., who married

William C. McGrew; Thomas R., for many years an employee in the Federal Pension Office; Louisa A.; and John B.

References: *Dictionary of American Biography,* Vol. XX, p. 246; Atkinson and Gibbens, *Prominent Men,* pp. 158-161; Rush, West and Company (publishers), *Cyclopedia of Monongalia, Marion and Taylor Counties,* pp. 11-36.

WILSON, ARCHABALD J. (January 10, 1801-September 24, 1866), delegate from Ritchie County, was born near Beverly, Randolph County, (West) Virginia. He was a nephew of Colonel Benjamin Wilson of the American Revolutionary Army and a son of John Wilson, each of whom, as delegates in the Virginia Convention of 1788, voted for the ratification of the Constitution of the United States. The latter held every office in Randolph County, except only that of commonwealth attorney.

For a time Archibald J. Wilson resided on Simpson Creek in present Taylor County, West Virginia. In 1828 he moved to Oxford in present Ritchie County in the same state. Ten years later he moved to a farm at the mouth of Lynn Camp, where he resided until his death. In early life he was a schoolteacher and one of the first surveyors in Ritchie County. As a constitution maker he was a friend of the free public school and favored the township as a proper unit for its organization and administration in West Virginia.

In or about 1825, Archibald J. Wilson married Elizabeth, daughter of Barton Hudkins of Simpson Creek, (West) Virginia. She bore him twelve children, who, in the order of their births, were John Marshall; Basil Hudkins; Horatio Nelson; Barton H.; Leroy P.; Eveline, wife of J. Smith Bee; Temperance J., wife of the Rev. Thomas Wesley Ireland; Love Ann, wife of Alexander Prunty; Sarah Elizabeth, wife of Columbus Monroe Collins; Archibald Blackburn; Winfield Scott who moved to Texas; and Josephine who married Jesse Hammond. From aggregate holdings of about five thousand acres, located at various points in Ritchie County, Archibald J. Wilson gave each of his children a farm. At the time of his death, he was a member of the United Brethren Church of Pennsboro, West Virginia. His grave is the oldest in its cemetery. His wife died in 1892 at the age of eighty-three, and was buried by his side.

References: Kendall, *History of Ritchie County* (West Virginia), pp. 106-107; Maxwell, *History of Randolph County, West Virginia, passim.*

YOUNG, SAMUEL (January 15, 1828-November 2, 1885), unsuccessful contestant of the right of Dr. David W. Gibson to represent Pocahontas County, was a native of that county and a son of Captain William Young. Samuel Young was converted at the age of twenty-two and was on September 3, 1856, ordained a minister in the Methodist Protestant Church. He served appointments at Rowlesburg, Nicholas, Greenup, Morgantown, and Wheeling. When the Convention met he resided at Edray, Pocahontas County. Undaunted because of his failure to become a constitution maker, he was a senator in the First, Second, and Fifth West Virginia legislatures. In April, 1864, he organized the "Pocahontas Independent Scouts" which, under his direction, engaged guerillas until the end of the war. In one of these engagements the Rev. Young received a wound, from the effects of which he never fully recovered.

About 1870 the Rev. Young, influenced doubtless by his relatives, most of whom had immigrated to the West, purchased a tract of land in Kansas, on which he laid out "Radical City." Disappointed in this adventure, he returned to the East and became an active minister in the Pittsburgh Conference of the Methodist Protestant church. As such he filled charges in Greene and neighboring counties. On Sunday, May 3, 1894, his memory was honored by "a large outpouring of the citizens at the Sulphur Spring," Pocahontas County, West Virginia. He was buried at Uniontown, Pennsylvania.

References: Price, *Historical Sketches of Pocahontas County;* Methodist Protestant, *Church Records;* Young family traditions.

HALL, ELLERY R. (February 27, 1834-September 23, 1868), secretary of the Convention, was born in Marion County, West Virginia. He was self-educated, but his fine qualities of mind and character enabled him to attain distinction both as a lawyer and a writer. He was secretary of the senate under the Virginia Reorganized Government and of the West Virginia senates from the outset until his death. During his later years he was an active partisan. He was a delegate to the Republican national nominating conventions of 1864 and 1868, and was an elector-at-large on the Lincoln-Johnson ticket. At the time of his death he was chairman of the Republican State Central Committee.

References: Atkinson and Gibbens, *Prominent Men,* p. 365; Wheeling *Daily Intelligencer,* September 24, 1868.

HALL, SYLVANUS WILSON (June 21, 1838-March 12, 1908), assistant clerk of the Convention, was born in present Marion County, West Virginia. May 1, 1860, he was employed as clerk in the office of the circuit clerk of that county, and in December, 1862, was appointed clerk of the State District Court of Appeals, with his office in Fairmont, Marion County. From the date of its organization in 1863 to 1874, he was clerk of the West Virginia Supreme Court of Appeals. Following his resignation from this position he engaged in the drug business in Fairmont, West Virginia.

References: Atkinson and Gibbons, *Prominent Men*, pp. 848-850.

ORR, JAMES C. (1828-189?), sergeant-at-arms of the Convention, was a merchant of Wheeling, Ohio County. Following the admission of West Virginia to separate statehood he was identified with the free public schools of Wheeling as a board member. He met with business reverses in the 70's and thereafter ceased to be prominent in public affairs. In a ceremony performed on December 24, 1850, by the Rev. William Cox of the Methodist Episcopal Church, Mary Jane Conley became Orr's wife. She died October 6, 1880, and was interred in Three Springs Cemetery, Hancock County, West Virginia, near her childhood home. Orr remarried and seems to have changed the place of his residence as his name ceased about 1890 to appear in the newspaper press and the city directory of Wheeling. Research for this sketch failed to determine the time and place of his death.

References: Ohio County records; Wheeling *Intelligencer;* Wheeling *Register; Wheeling City Directory.*

STARTZMAN, HENRY (October 24, 1824-April 2, 1876), of Kingwood, Preston County, was sergeant-of-arms during the recalled session. Of German descent, he was born at West Union, now Aurora, Preston County, (West) Virginia. He moved to Kingwood in the same county in 1845 and engaged in the tanning business which he continued to 1861, when he became a quartermaster in the Federal Army. His health failing, he came home and was for a time assistant assessor of internal revenue. In 1864 he was elected county recorder which office he filled until the county court system was revived, when he became clerk of the county court which position he held until his death. He was also clerk of the board of supervisors for several years. He was a Methodist and a Mason.

References: Oran F. Morton, *A History of Preston County,* West Virginia (Kingwood, W. Va., 1914); part one, p. 396; Samuel T. Wiley, *History of Preston County, West Virginia* (Kingwood, W. Va., 1882), pp. 322-323; *Preston County Journal,* April 8, 1876.

DEBATES AND PROCEEDINGS

OF THE

First Constitutional Convention of West Virginia

(1861, 1862, 1863)

WHEELING, VIRGINIA

I. TUESDAY, NOVEMBER 26, 1861.

In pursuance of elections held on the fourth Thursday of October, 1861, under authority of "an Ordinance to provide for the formation of a new State out of a portion of the territory of this State," passed August 20th of that year by the Convention which reorganized the government of the State of Virginia, the Convention to frame a Constitution for the proposed new State of Kanawha assembled in the United States Court Room, in the city of Wheeling, at eleven o'clock A. M., this day.

The Convention was called to order by Chapman J. Stuart, of Doddridge, who nominated as temporary chairman John Hall, of Mason.

Mr. Hall was chosen and assumed the chair.

E. H. Caldwell, of Marshall, moved the appointment of G. L. Cranmer, of Wheeling, as temporary secretary.

Mr. Cranmer was appointed and entered upon the discharge of his duties.

P. G. Van Winkle, of Wood, presented a roll of the members, made out from returns received at the office of the Secretary of the Commonwealth.

It was called by the Secretary and the following members responded to their names:

Josiah Simmons, of Randolph.
James W. Parsons, of Tucker.
John J. Brown and John A. Dille, of Preston.
W. T. Willey and H. Dering, of Monongalia.
E. B. Hall and H. Haymond, of Marion.
Harmon Sinsel, of Taylor.
E. J. O'Brien, of Barbour.
R. L. Brooks, of Upshur.
J. M. Powell, of Harrison.
Robert Irvine, of Lewis.
James H. Brown, of Kanawha.
W. W. Brumfield, of Wayne.
Granville Parker, of Cabell.
D. S. Montague, of Putnam.
John Hall, of Mason.
E. S. Mahon, of Jackson.
H. D. Chapman, of Roane.
B. F. Stewart, of Wirt.
W. W. Warder, of Gilmer.
A. J. Wilson, of Ritchie.
P. G. Van Winkle and W. E. Stevenson, of Wood.
Joseph Hubbs, of Pleasants.
Abraham D. Soper, of Tyler.
Chapman J. Stuart, of Doddridge.
R. W. Lauck, of Wetzel.
E. H. Caldwell and T. H. Trainer, of Marshall.
James W. Paxton and Gordon Battelle, of Ohio.
Joseph S. Pomeroy, of Hancock.
George Sheets, of Hampshire.
Abijah Dolly, of Hardy.
Robert Hagar, of Boone.

THE SECRETARY. There are 37 now present.

THE CHAIR. There is a quorum.

MR. VAN WINKLE. The whole number authorized is 51.

THE CHAIR. The whole number returned was 45.

MR. VAN WINKLE. I now move that the rules of the June convention be adopted as the rules of this Convention, and that a committee of five be appointed to inquire and report whether any amendment to them is necessary.

The motion was agreed to.

MR. VAN WINKLE. I would further move, sir, that a committee be appointed to nominate suitable persons for permanent officers of this Convention; which would include not only the president and secretary, but door-keepers and sergeant-at-arms. The committee would also indicate, probably, what officers would be required. I apprehend that would be the best way to proceed in reference to it. I believe that is the usual mode. I suppose a committee of nine would do.

MR. STUART of Doddridge. It strikes me, sir, that this committee is unnecessary. It is unusual, so far as my experience goes. I think that the proper motion to be made now is, that the Convention proceed to elect their permanent officers. I see no necessity for appointing a committee. We may as well engage in the election of our permanent officers at once. Any person can suggest. I know that has been the rule adopted by former conventions in Virginia—the last two at least. I believe in our convention in June, we, perhaps, appointed a committee.

MR. VAN WINKLE. Well, sir, it strikes me we have come here together, many of us strangers to each other, and have not been here long enough to get acquainted; and it seems to me the intervention of a committee would be peculiarly appropriate in a case of this kind. I should hardly be willing to go into an election today, in this few hours meeting; but as I before stated I am not at all strenuous: the Convention can decide it.

MR. WILLEY. I suppose the object of the member from Wood is not to preclude the nomination of others than those nominated by the committee.

MR. VAN WINKLE. O, no.

MR. WILLEY. If that be the case I cannot very well see myself what would be gained by referring it to a committee. It is true we are strangers to each other, and by a little friendly conference may arrive at better conclusions than we could in a hasty manner here. I concur with the gentleman from Doddridge, however, that it is not usual in bodies of this kind to resort to expedients of that character. It is immaterial with me, provided the action of the committee is not final but leaves the coast clear to put other persons in competition if any member should see fit to do so.

MR. SINSEL. It may be that there will be some contested seats here. Would it not be better first to arrange that matter by appointing a committee on credentials. They have not all responded to their names here. Is not that matter to be examined into first?

MR. POMEROY. I hope, Mr. President, we will, after these preliminary matters have a recess till the afternoon; and then I think we will be prepared to go into a permanent organization and elect all the officers necessary. I think it would be a waste of time to spend two days in the organization of a body no larger than the present one.

The motion to raise the committee was not agreed to.

MR. SINSEL. I move that there be appointed a committee of five on Credentials and Contested Seats.

The motion was agreed to, and the Chair named the following gentlemen to compose the committee.

Messrs. Sinsel, Brown of Preston, Stuart of Doddridge, Parker, and Paxton.

MR. VAN WINKLE. If the Chair please, I desire the appointment of another committee; and with a view that we are so recently come together, I will make the motion now, and if it is the pleasure of the Convention to have the committee appointed, the Chair can take time till the assembling in the afternoon to select names and can then announce them. I move, sir, that a committee, say of nine, be appointed to report the best method of bringing before the Convention such provisions to be inserted in the Constitution as may be proposed. It is expected that the committee will report the business that is to come before the Convention, assigning each matter to an appropriate committee.

The motion was agreed to.

MR. STUART of Doddridge. I now move to take a recess till 3 o'clock this afternoon, with a view of then going into the election of permanent officers.

The motion was agreed to; and the Convention took a recess.

THREE O'CLOCK, P. M.

On the reassembling of the Convention, the Chair proposed to name the committee raised on motion of Mr. Van Winkle.

MR. SOPER. I move the reconsideration of the resolution. I do it because I deem it an improper one to come before the Convention at this stage. The first business of the Convention is to have a permanent organization, and we have taken the preliminaries by the appointment of temporary chairman and secretary. The next business in order I apprehend is, sir, to have a president and secretary of the Convention, and then we are properly organized and prepared to entertain any proposition to bring business before the Convention. It is with this view, sir, that I move a reconsideration of the vote by which the resolution of the gentleman from Wood was adopted during the forenoon.

MR. VAN WINKLE. I offered several resolutions.

MR. SOPER. I mean, sir, the last resolution as to the mode of bringing business before the Convention. There was another Committee appointed—that on credentials. I suppose that intended to embrace the whole subject. It probably would be a proper inquiry to ascertain how many counties are represented here by delegates. I think it would be proper to ascertain that even before we take a vote on the organization. But this committee I suppose will embrace that matter within the range of their inquiries. I can see no objection to that inquiry.

The motion to reconsider was agreed to.

MR. SOPER. I now move, sir, that we go into the election of a president. The Committee on Credentials, I believe, is not prepared to report. There appears to be some misunderstanding as to who was chairman of it.

MR. BROWN of Preston. I think not, sir. The committee is through.

MR. SOPER. To obviate that, however, sir, I will ask for the reading of the counties embraced in the ordinance calling this Convention with a view of ascertaining how many of them have delegates here.

MR. VAN WINKLE. I believe, sir, by the resolution of the gentleman from Doddridge, the election of permanent officers was made the order of the day for 3 o'clock, and that is the business before us until that is set aside by resolution.

MR. STEVENSON of Wood. The matter of reconsideration is not entirely disposed of. If I understood the motion of the gentleman over the way it was merely to reconsider the vote agreeing to the motion of the gentleman from Wood County appointing a committee. It seems to me, sir, that vote, which was carried, to reconsider, simply brings up the motion again to be disposed of by the Convention.

MR. VAN WINKLE. The vote to reconsider nullifies the vote by which the resolution passed, and the next question is, shall it pass? But it can either lie over on the table or I will withdraw it, if the Convention seem to think this is not the proper time to put it.

THE CHAIR. The Chair did not understand the resolution as having been disposed of in any way.

MR. WILLEY. Unquestionably the resolution is before the house. I move for the present to lay it on the table, and after the house shall have organized we can then take it up.

The motion to lay on the table was agreed to.

Mr. Sinsel, from the Committee on Credentials then presented the following report:

The Committee on Credentials beg leave to report that the following gentlemen are entitled to seats in the Convention as members thereof, from the following counties, viz:

Stephen M. Hansley, from the county of Raleigh.
R. W. Lauck, from the county of Wetzel.
Robert Irvine, from the county of Lewis.
Benjamin L. Stephenson, from the county of Clay.
Thomas W. Harrison and John M. Powell, from the county of Harrison.
Dudley S. Montague, from the county of Putnam.
Richard L. Brooks, from the county of Upshur.
A. J. Wilson, from the county of Ritchie.
G. F. Taylor, from the county of Braxton.
W. W. Brumfield, from the county of Wayne.
Josiah Simmons, from the county of Randolph.
Joseph Hubbs, from the county of Pleasants.
William W. Warder, from the county of Gilmer.
H. D. Chapman, from the county of Roane.
John Hall, from the county of Mason.
James Hervey, from the county of Brooke.
Robert Hagar, from the county of Boone.
W. T. Willey and Henry Dering, from the county of Monongalia.
P. G. Van Winkle and W. E. Stevenson, from the county of Wood.
E. B. Hall and Hiram Haymond, from the county of Marion.
J. W. Paxton, Daniel Lamb and G. Battelle, from the county of Ohio.
Joseph S. Pomeroy, from the county of Hancock.
Abraham D. Soper, from the county of Tyler.
James W. Parsons, from the county of Tucker.
Chapman J. Stuart, from the county of Doddridge.

Granville Parker, from the county of Cabell.
Emmet J. O'Brien, from the county of Barbour.
Harmon Sinsel, from the county of Taylor.
John J. Brown and John A. Dille, from the county of Preston.
E. S. Mahon, from the county of Jackson.
Benjamin F. Stewart, from the county of Wirt.
T. R. Carskadon and Geo. Sheets, from the county of Hampshire.
E. H. Caldwell and T. H. Trainer, from the county of Marshall.
Abijah Dolly, from the county of Hardy.
J. H. Brown and Lewis Ruffner, from the county of Kanawha.

Your committee would further report that Wm. Walker, from the county of Wyoming, and James S. Cassady, from the county of Fayette, claim seats in the Convention as delegates from said counties, but no returns complying with the Ordinance for a division of the state, have been produced before the committee, but the credentials under which they claim their seats are herewith returned for the action of the Convention in the premises.

From the counties of Logan, Nicholas, Webster and Calhoun, no returns have been received.

HARMON SINSEL.

MR. SINSEL. Here are the papers upon which these gentlemen that I refer to claim seats here as delegates.

The report was adopted.

MR. SOPER. I wish the credentials read.

The Secretary read as follows:

"Whereas no election was held, nor could be held on account of the hostile state of the country, in the county of Wyoming, on the 24th day of October last, as provided by the ordinance of the convention for a new state, for delegates to the Constitutional Convention: We the undersigned citizens and voters of said county, feeling a deep interest in the matter, and desirous of expressing our wishes for the said new state of Kanawha, and also to be represented by our delegate in said convention, do hereby appoint William Walker our delegate for said county to said Convention and request that he may be admitted as such as fully as if elected duly on the day and in the manner prescribed by said ordinance.

"Given under our hands, this 12th day of November, 1861. (Signed by) George W. Stuart, John L. Cook, Lewis Miller, James Cook (his mark), James W. Cook, Esq., Davis Tolar, Thomas Colton, William Tolaver, Ralph Laverty, Steel Laverty, G. W. Hood, Patterson Ballard, Levi D. Clay."

"Whereas no election was held in the county of Fayette on the 24th of October, 1861, as prescribed by the ordinance for the new State, nor could any such election be held on account of the rebel forces in the county; and the undersigned being citizens and voters in said county, desirous to express our voices in behalf of the new State, and to be represented in the Convention to form a constitution for said new State, do hereby appoint James S. Cassady our delegate to said Convention for the county of Fayette, and request that he may be admitted to take his seat to represent said county as if duly elected as prescribed.

"Given under our hands this 14th day of November, 1861.

(Signed by) William A. Wriston, Jonathan Weaver, James D. Fellers, Joshua A. Holt, Pattison Wriston, Noah Scarbrough, James Wriston, William L. Roop, A. D. Wiseman, A. J. Perry, James M. Perry, Boner Settle, Henry Arthur, Benjamin L. Stone, William E. Perry, John Jones, H. A. Burgess, John Kincaid, Robert Ingram, A. C. Fellers, Jesse K. Fellers, Jackson Kelley, C. W. Settle, R. P. Gilem, J. G. Settle, Alexander Taylor, William Taylor, James Lay, George A. Darlington, James Arthur, William C. Arthur, McCajah Anderson, John J. Darlington, Henry Taylor, Pleasant Kincaid, Willoughby Miller, Henry C. Hawkins, Preston Kincaid, William Settle, Alva Johnson, James Kincaid, Wm. Darlington, Francis A. Settle, John F. Woods."

"Headquarters, Department of Western Virginia,
Gauley, Virginia. November 19, 1861.

"Special Order No. 39.

"Leave of absence for 30 days is granted to Capt. James S. Cassady, 8th regiment Virginia Volunteers.

"By command of General Rosecrans.

"Joseph Darr, Jr.,

"Maj. 1st Va. Cav. A. A. G.

"Maj. John H. Oley,

"8th reg. Va. Vol."

MR. WILLEY. Those papers perhaps require a little time for deliberation. We are now not organized yet, and it is very evident that there are sufficient members present about whose credentials there is no doubt to organize this body. I suggest, sir, whether it would not be better to allow further of the questions that may come up under those questions to lie over until after we are properly organized. I move that for the present these papers be laid on the table.

The motion was agreed to.

MR. STUART of Doddridge. I move now to go into the order of the day.

The motion was agreed to.

MR. STUART of Doddridge. I must apologize to the Chair for having placed him in rather a singular position. It was rather premature, I think, on my part, when I called him to preside momentarily over our body here, from the fact that I had been solicited by a number of friends who spoke of our present incumbent as president of the body.

THE CHAIR. Will the gentleman withhold a moment and let me call upon my friend from Wood (Mr. Van Winkle) to take the chair.

Mr. Van Winkle took the chair, and the Chairman retired.

MR. STUART of Doddridge. I now place in nomination for president of this body John Hall of Mason.

He is a gentleman with whom I presume many of us are acquainted. He has acted in a body here before—a man of ability, of dignity and character. I hope it will be the pleasure of this Convention to confer that office upon him. He is an intelligent man; a man of experience. I make the suggestion to his friends and hope they will heartily support him; and I hope we will have short work of this thing and get to business.

MR. STEVENSON of Wood. I suggest that the gentleman be elected by acclamation.

MR. DERING. I would nominate for the same position James H. Brown, of Kanawha.

MR. BROWN of Kanawha. I hope the gentleman will withdraw that last nomination. I know the gentleman's motives, but I appeal to him to withdraw it.

MR. DERING. From what I have heard of the gentleman, I think he would make a good presiding officer; and I must decline to withdraw the nomination.

MR. SINSEL. I nominate P. G. Van Winkle of Wood.

MR. VAN WINKLE (in the chair). Mr. Van Winkle begs most respectfully to decline. There are two difficulties in the way—one physical, the other mental. In the first place, he cannot see the faces of members; and in the second place, he cannot call their names for a half hour after he recognizes them (Laughter).

MR. DERING. At the earnest solicitation of that gentleman, I will withdraw the name of Mr. Brown of Kanawha.

MR. LAMB. I move that Mr. Hall be declared elected.

The motion was put, and Mr. Hall was unanimously elected.

Messrs. Stuart of Doddridge and Dering were directed to conduct the President to the chair; which duty was performed.

THE PRESIDENT. I thank you, gentlemen, for the kindness you have done me, but I fear, really, that I shall be badly qualified to perform the duties you have entrusted to me. But trusting in your kindness, I shall hope, or at least make an effort, to do justice to the position. We are embarked in a cause of vast importance; and no convention ever sat in the state, that was of more importance than this. I shall, therefore, at all times look to you for aid in the performance of the duties of the Chair. With these remarks, gentlemen, I again return you my thanks.

MR. VAN WINKLE. I apprehend, sir, it would now be in order to call up the resolution laid on the table, with reference to the appointment of a business committee.

MR. STUART of Doddridge. Would it not be better to appoint a secretary first?

MR. VAN WINKLE. Beg pardon, sir, I had forgotten.

MR. SINSEL. I nominate as a candidate for secretary Ellery R. Hall, of Taylor county.

MR. WILLEY. I rise, sir, to second that nomination most cordially. Mr. Hall is a gentleman of a fair degree of intelligence; he is a member of the bar; of fine personal appearance; a good scrivener; and I believe will make a fair officer in every respect. He has great claims on our consideration in other respects, I think. In respect to his loyalty, he is like Caesar's wife, "above suspicion." He has been the object, to some extent of persecution, driven from his profession, and sometimes even from his home.

I hope it will be the pleasure of this body to give Mr. Hall the position. I believe he will answer the just expectation of the gentleman who nominated him and of myself.

MR. MONTAGUE. I rise to nominate Mr. Daniel D. Johnson of Tyler county. He is a young man of good habits and is competent.

MR. STUART of Doddridge. Mr. Johnson being put in nomination, and being a neighbor of mine, it would be rather a duty of mine to tell the Convention as near as I can who Mr. Johnson is. I presume he is a stranger to a good many of you. He is a young man, sir, of sterling integrity. So far as the Union question is concerned, I can say as my friend has said, that he is "above suspicion." He is a young man of fine appearance and good address, and I believe he is a man who would give entire satisfaction to this body. It would be unnecessary for me to say anything to members of our late convention which assembled in this room not long since. Every one was acquainted with Mr. Johnson and knew his capacity as a member of that convention. He acted as a member of that convention; and I must say, for a young man he displayed unusual ability. I met Mr. Johnson last winter. Last February was my first acquaintance with him, when secession was first set upon the wings; and I found him, sir, true and loyal; and he had done a lion's work in opposing secession. He took it from its very inception.

It would be unnecessary to say anything of Mr. Johnson to those acquainted with him; and I merely make these remarks because I presume, sir, many members of this Convention are not acquainted with him. He is a young man entitled to large credit for the position he has taken and the good he has done for the Union cause. He has perhaps effected as much in his own county as any other man in the county of Tyler. Peace dwells in the county of Tyler. We have heard of no trouble, no broils, there; and a great deal of it was brought about by the influence, labors, and integrity of this young man, Mr. Johnson.

There being no further nominations, the vote was taken and resulted:

For Ellery R. Hall—Mr. President (Hall of Mason), Brown of Preston, Brown of Kanawha, Brooks, Brumfield, Battelle, Chapman, Dering, Dille, Dolly, Hansley, Hall of Marion, Haymond, Harrison, Hervey, Irvine, Lauck, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Simmons, Sinsel, Stewart, Sheets, Trainer, Van Winkle, Willey, Warder, Wilson—32.

For Daniel D. Johnson — Messrs. Caldwell, Hubbs, Hagar, Lamb, Montague, Mahon, Stevenson of Wood, Soper, Stuart of Doddridge—9.

So Mr. Hall was declared elected secretary.

MR. POMEROY. The next thing is the election of sergeant-at-arms. I nominate James C. Orr, of the city of Wheeling. It is not necessary to make any lengthy remarks. I can vouch for his loyalty and for the firm stand he has taken in behalf of the Union from the commencement of our difficulties. Being acquainted with all the different halls and places that would be suitable for committees to meet in, or for the occupation of this body if we have to remove, and calculated from his acquaintance with many other things to administer to the wants of the Convention, I think his claims are such that it will be the pleasure of this Convention to confer that office upon him.

MR. HALL of Marion. I desire, sir, to put in nomination for that office William M. Dunnington, of Marion. I do so, sir, with a belief that he will make a most efficient officer—that he will meet every demand the position may require. I suppose, sir, that in the selection of an officer, at all events, that will be required—or should be—and I presume it will. What may be the qualifications of other gentlemen I cannot say; but of Mr. Dunnington, I may say, that—whilst a number, perhaps, of this body are personally acquainted with him, many are not—I presume, sir, those who with myself are acquainted with him will bear me testimony of his fitness, of his capacity for the position; and if there are any claims—whilst I am not in the habit of enlarging upon considerations of that sort—if there are any claims that will entitle a man to the position, I presume no man whose name could be mentioned here would present stronger claims that Mr. Dunnington.

It has been the custom, and is perhaps right and proper, when men are put in nomination for some assurance to be given that they are loyal. I certainly, sir, should not nominate any man unless I knew him to be so. Mr. Dunnington is a man who has been true and faithful, and he has stood in Marion county as a breakwater, and has suffered all that those who occupy such positions must necessarily suffer, and has really, as remarked of another, been thrown out of every employment; but for which I should not have been requested by him to place his name before this Convention.

I trust it may be the pleasure of the Convention to consider favorably the claims of Mr. Dunnington.

MR. STEVENSON of Wood. I move to proceed to a vote.

The vote was taken and resulted:

For James C. Orr—Mr. President (Hall of Mason), Brown of Preston, Brooks, Brumfield, Battelle, Caldwell, Cassady, Dering, Dille, Dolly, Hubbs, Hervey, Hagar, Irvine, Lamb, Lauck, Montague, Mahon, O'Brien, Parsons, Parker, Paxton, Pomeroy, Simmons, Stewart of Wirt, Stevenson of Wood, Soper, Stuart of Doddridge, Sheets, Trainer, Van Winkle, Willey, Wilson—33.

For William M. Dunnington—Messrs. Brown of Kanawha, Chapman, Hansley, Hall of Marion, Haymond, Harrison, Powell, Sinsel, Warder—9.

So Mr. Orr was declared elected sergeant-at-arms.

THE PRESIDENT. The motion of the gentleman from Wood (Mr. Van Winkle) would now be in order.

MR. VAN WINKLE. No, sir; some more officers, I believe.

MR. LAMB. I move that the sergeant-at-arms be authorized to appoint a doorkeeper and assistant and three pages.

MR. STUART of Doddridge. I move to amend by saying that the President of this body shall appoint two doorkeepers and two pages. I am not acquainted with the gentleman selected as sergeant-at-arms; and I think, anyhow it is unusual to place this thing in the hands of the sergeant-at-arms.

MR. LAMB. I have no objections, of course, Mr. President, that the appointing power should be given to your honor, but I think you have not such an acquaintance with the men who could be employed in places of that kind about this town as to render it very proper to put that power upon you which Mr. Orr would have. At the same time I may state that the motion I have made is just carrying out the plan that was pursued during the former convention, and, I believe, pursued by the legislature. I think the original motion is in the best shape.

The President put the question on the amendment and decided that it had carried.

MR. LAMB. There is certainly some mistake about that vote. There were certainly many more noes than ayes.

MR. STUART of Doddridge. I think it is in very bad taste to begin squabbling about the decision of the Chair.

MR. LAMB. I think it must be obvious to every member of the Convention that there is a mistake.

MR. POMEROY. I move to call the roll. That will settle it.

The motion was agreed to; and the vote being taken by yeas and nays resulted:

YEAS—Messrs. Brooks, Brumfield, Cassady, Dering, Dolly, Hall of Marion, Hubbs, Irvine, Montague, O'Brien, Parsons, Simmons, Stewart of Wirt, Soper, Stuart of Doddridge, Willey, Wilson—17.

NAYS—Messrs. Brown of Preston, Battelle, Caldwell, Dille, Hansley, Haymond, Harrison, Hervey, Hagar, Lamb, Lauck, Mahon, Powell, Parker, Paxton, Pomeroy, Stevenson of Wood, Sheets, Trainer, Van Winkle, Warder—21.

So the amendment was rejected.

The question recurring on the original motion, it was agreed to.

MR. LAMB. Without making a motion in regard to the matter, I would merely suggest for the consideration of the Convention, whether it is not proper for the members of this Convention to now take the oath required by the ordinance for the reorganization of the government, before proceeding further in the discharge of their duties. I see no impropriety in it; and so far as my own views are concerned I think there is an obvious propriety that it should be done. I suppose, however, that it would not be directly required either by the ordinance under which we are assembled or the ordinance for the reorganization of the state government. Though that ordinance requires that all persons going into the service of the State shall before they proceed in the discharge of their several duties take this oath, yet a convention is a body that is perhaps outside of and beyond the law. Still it would be proper I think that the members of this Convention should now take that oath, as well as the officers which the Convention have elected.

MR. STEVENSON of Wood. I would like to make a single remark, Mr. President. I think it would be proper, sir, that the members of this Convention should take an oath of office as members of the Convention. I hardly see the propriety, however of administering an oath to support the reorganized state government when we are about to take action to separate ourselves from it. I merely suggest that to the gentleman from Ohio. The oath of office I think would be sufficient.

MR. WILLEY. I did not distinctly understand the proposition. Will the mover state it again?

MR. LAMB. The Chair will do it.

THE PRESIDENT. The proposition is that the members of the

Convention take an oath to support the government of the United States and the reorganized government, in addition to the oath of office.

MR. LAMB. The oath prescribed by the ordinance for the reorganization of the state government.

I wish to make a single remark in reference to the remark which was made by the gentleman from Wood. I cannot see that there is any impropriety in this Convention taking the oath to support the reorganized government. We are acting here under that reorganized government. We are acting here not to upset that government or overthrow it; but we are acting with its consent to accomplish a particular object. We are not acting in opposition to that government; for unless that government had sent us here—unless that government through its legislature shall consent to the division of the state which is proposed, it all goes for naught. We may very well be bound then to support the reorganized government as long as it is really a government within this portion of the state. I had the same difficulty at first with the gentleman from Wood, in regard to taking this oath; but with these considerations before us, I see no impropriety on the ground of the objections to it we have heard.

MR. WILLEY. For myself, sir, I should have no hesitation in taking that oath. I have but recently taken the oath most essential in the premises. I will say this, however, sir, that I suppose it is proposed as a test of the loyalty and fidelity of the members of this body. It can have no other object; because it is extra official, and it is a matter entirely at the option of any member of this body whether he will take it or not. There is no law that requires it. We are the embodiment of the people, and it would be in fact taking an oath that we will be faithful to ourselves—in short, sir, the people swearing themselves to be true to themselves. Now, sir, I have no objection to doing that; but I came here endorsed by my constituents as a loyal man and worthy of their confidence; and I must say to them I have not the least objection in the world to taking all these oaths, having taken the most material in a case in which it was required by law. But my constituents would have no more confidence in me than they have now.

Besides, sir, this body, it does seem to me has received a higher sanction from the voluntary suffrage of a generous constituency, than by a voluntary oath to be true to that which we are pledged to be true to by every principle of honor and integrity as men.

MR. VAN WINKLE. We have assembled here under the authority of the restored government of Virginia. They provide for us, sir, pay us, and do all that is necessary in order to give force and effect to the proceedings of our Convention. We find provided in the ordinance calling us together that "the Government of the State of Virginia as reorganized by this Convention"— that is the late convention, at its session in June—"shall retain within the territory of the proposed state, undiminished and unimpaired, all the powers and authority with which it has been vested, until the proposed state shall be admitted into the Union by the Congress of the United States; and nothing in this Ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said reorganized state government in any county which shall not be included within the proposed State." In the ordinance reorganizing the state government is prescribed the form of an oath which is to be taken by all the state officers—by the members of both houses of the general assembly—by the judges, clerks, sheriffs, commissioners of the revenue, and all officers and persons holding authority under the State, in general terms.

It is true, sir, that in framing this ordinance the Convention did not ask that this body should take this oath; but evidently holding our authority from the State of Virginia, we are certainly included within the intent of the ordinance which requires that oath to be taken by its officers.

As to the argument of the gentleman from Monongalia that the endorsement of the people would supercede the necessity, so also would the election of members of the senate and house of delegates by the people supercede the necessity of administering an oath to them, if that were true. But I apprehend, sir, in requiring it to be taken by the senators and delegates in the general assembly we ought not to claim that our election here is any superior endorsement to theirs. Why, I do not know that it is required —I do not believe it is necessary—to test any gentleman's loyalty; yet I think, sir, out of courtesy, with the feeling of duty which we owe to the authorities of the state under which we have assembled, it being clearly within the spirit of this section of the ordinance requiring that oath of all its officers, that it would be entirely decorous and proper that that oath should be administered to the officers and members of this body. I do not anticipate that there would be any difficulty on the part of any one taking it. But as the taking of it would be clearly within the spirit of the ordinance, I think—as I have already said,— it would be proper for us to do so. The section which I read from the ordinance under which we are convened tells how long the authority of the reorganized government shall extend over the proposed new State, that is until it is ready to be put in operation; and unless that is the case, of course this new State if it ceased its allegiance to the restored government of Virginia before it got in full operation, would be in a state of anarchy.

Now, sir, the oath of allegiance only binds a party while he is under its allegiance. A party going into a foreign country is there required to take an oath. He takes it while he is there receiving its protection and while he is a denizen there. He certainly owes allegiance there without an oath, and his oath only binds him to pay his strict duty; but when he leaves the foreign country and returns home, the oath is no longer binding. It is only an oath to bear allegiance to the government while he is in a situation to demand its protection. Well, sir, we admit ourselves to be precisely in that situation. We are here citizens of Virginia, owing allegiance to the restored government, and we are bound to render that allegiance. But I think, sir, the remarks I have previously made in reference to the spirit of the ordinance requiring that oath to be taken, were sufficient to show that it ought to be taken by this public body.

MR. HALL of Marion. Nobody in this body I presume would be unwilling to take this oath. I am not; but I want us to act as if we had confidence in each other. I think the suggestion of the gentleman from Monongalia a forcible one—that it would only be taking an oath to support ourselves. Let us act as though we had confidence in each other; because it would show to the world that we had no confidence in ourselves, men who have been elected and sent here by the people. I want to act now as though we were acting in confidence towards each other.

MR. STEVENSON of Wood. I would not wish it to be understood that I have the least hesitation in having that oath administered and taking it myself if it is necessary. The difficulty in my mind was simply this: that we have assembled here for the purpose of creating a constitution for the new State. Now, this oath to support the reorganized government of Virginia, if I understand it, will pledge us to support the existing Constitution of Virginia.

Well now, it may be our duty as members of this Convention to move to change, and probably in some cases to destroy, portions (if I may use the expression) of that constitution. The question is whether after having taken this oath to support that constitution we are really supporting it when we are engaged, as far as this Convention can, in destroying it. I think if we take an oath to support the Constitution of the United States, and an oath of office, that would cover everything here.

MR. SOPER. I discover a difference of opinion on this question; and with a view of giving time to reflect until tomorrow, I move to lay the motion on the table.

MR. DILLE. Mr. President, there is no motion, as I understand it, before the Convention.

MR. CALDWELL. It is a mere suggestion.

MR. DILLE. I understand the gentleman from Ohio disclaimed entirely making any motion on the subject; and hence the Convention has nothing before them, and the discussion we have had is but a preliminary discussion to obtain if possible the views of the Convention in reference to that matter. Now, personally, I can say with, I believe, every member of this Convention that I have no doubt that you all believe I am loyal, and I have no doubt that you are all loyal. Further than that I have no doubt the greater proportion of the members of this body have already taken this oath. For my part, after a not very careful examination of this ordinance, I see no necessity of taking this oath. It seems to me to be an oath taken without authority simply to test the loyalty of members of this Convention. I do not think that my friend from Ohio had any such notion; but it would seem to the world as though that was contemplated by a move of this kind.

MR. LAMB. I must certainly beg leave to disclaim, most explicitly, any intention whatever of intimating that I believe there is a single member of this Convention that is disloyal to the Union cause. I made, as the gentleman very properly remarked, not a motion but a suggestion, with a view of eliciting the views of members; and I did it more under this impression: that as in every instance we require, within the sphere in which this reorganized government operates, every officer, every man who is acting in the public service, before he proceeds to the discharge of his duties to take this oath, that there was an obvious propriety that the oath should be taken by the members of the Convention. Still if there is any difficulty in regard to the matter, the suggestion that has just been made to lay the subject on the table that members may think of it, is a very proper one and I am disposed to acquiesce in it. I think they will all come to the conclusion that under the circumstances there is an obvious propriety in the members of the Convention saying that we shall not be the only exception within this land in regard to the operation of this rule—that this rule which we apply to everybody, no matter how exalted, no matter what evidence he may have of the public confidence—that this rule that we apply to everybody else, the same should be meted out to ourselves.

MR. BROWN of Kanawha. I beg leave to say a word or two. This, I understand, is a proposition for this body to prescribe to itself an oath. Now, I should not, if I had been in the convention that provided and prescribed the ordinance under which this meets, have been in favor of making an exception of it; but the question is not what we are to do in making exceptions; the question is whether the ordinance of the convention that assembled us requires and prescribes an oath to this body. I hold, sir, that we have no authority to prescribe oaths to each other unless the law under which we assemble requires we should take that oath. I have no authority to prescribe an oath for you or your conscience upon any matter of issue here. But it would be very proper if the law under which we are assembled required that each individual before entering on the duties should take the oath, that we take it in conformity with the authority under which we act.

But the question simply occurs to my mind: does the ordinance under which we are assembled and by authority of which we are here as the representatives of the people — does that ordinance require and prescribe that we take this oath? If it does, then it is our duty to do it, not now, but before we did anything in this case.

Now, in the case of the legislature, the Constitution of the state and the ordinance reconstructing and reorganizing the government of the state, expressly requires that before the members of the legislative body take their seats they shall take this oath. It is not an oath prescribed by the legislature to itself but by the higher authority. Every officer of the state takes that oath in conformity with law; and if he violates it, he is guilty of perjury. But if this Convention would show their allegiance—if anybody were here to question it—but who questions it? Who entertains doubt as to the loyalty of men here? If any violation of this oath is committed by any individual here is he guilty of any perjury? I must confess, sir, I do regard an oath as too sacred a thing to be made common by prescribing it to ourselves without the authority and requirements of law. Now it is nothing pertinent to the duties we are to perform, as I conceive. We are not here to make laws, violate constitutions, or upturn governments; but simply to make and form and propose a constitution to receive its vitality from the hands and voices of the people—nothing more; and the Constitution that this Convention shall prescribe is as worthless as the paper on which it is written till it has the life and vitality breathed into it by the people.

I cannot see, therefore, the propriety or necessity of calling upon this Convention to go through the forms of taking oaths. Every man here, I presume not only acknowledges his obligation and duty to uphold and sustain the government as this oath would require him to do, but almost all the body have taken it over and over again.

With these views, I confess, therefore, I must vote against the proposition.

MR. HALL of Marion. I really, sir, dislike to occupy any time on this question, and had no suggestion been made in reference to it, I should have felt no interest with reference to the matter. I should have considered that all men here were loyal. I do yet consider so. But I am unwilling that any body of people shall assemble themselves at this time and in this country and hesitate a moment. There is a fitness, it seems to me, in every man taking the oath every morning when he goes to his breakfast, when we see treason all round us in quarters where we have been startled to find it. There is a propriety in a man distrusting himself though he may be endorsed by his whole people. I concur there is some propriety in the suggestion that this should not be made too common lest it lose its force and effect. But when oaths are violated with such impunity and with such a high hand all around us, there is a fitness in imposing the obligation on those who will regard an oath, and letting them say in the sight of God, I will do my duty. I do not know how it is elsewhere but in the county of Marion—although the convention that assembled here declined to require that attorneys who practice at the bar should take the oath—our people there who have been harassed by the guerilla bands that infest our county, have become so tired of this rebellion and treason that our jurors rose up and said to the court, if you do not require the oath to be taken, we will suffer no man who has treason in his heart to open his lips to us on any question. —I want to see us lay hold of this thing and say we are not here to violate any law. It is said—the secessionists in our country say—you are playing the very same game of secession that you abuse us about. No, sir, we may take this oath and keep it, and still discharge the duties of this Convention. I have taken the oath before four or five times—I do not know how often—and I desire to see this body, every member of it, take it. Not as a test of the loyalty of the men here; yet the people may send a man here that is not loyal. They may be deceived. It is true when we went down to Richmond, we did not swear at all, because so many of us in the convention thought an oath would be in our way. But we discovered the propriety of knowing exactly where men were and what for; and we found that men who were there endorsed as good Union men were the arch traitors of the crowd. Now, sir, I propose if there is any chance of anybody being mistaken, to test it I am willing to come up and let the people who sent me here after promises and declarations see if I am the man I then professed to be. I do not like we should suggest the thing and then back down from it; and I believe, sir, the spirit of the authority under which we act requires it. I do not believe any member of this body would take this oath in a manner that it would lose any of its force or weight by being taken by the members of this body. I hope since the matter has been suggested that we will not stand as the single exception, and that we will take that oath. I believe we will keep it. I do not believe there is an unwillingness to take it, because a number who have spoken have already taken it. But I desire that we shall not move in that direction and recede. For the example's sake, I trust it will be the pleasure of the Convention to say not that the law requires this thing, but that so many as will, let them take it. I would not require any member. I do not believe we have any right to require it. If a member has objection to taking it, what right have we to compel it? We cannot call him to account for it. I do not propose to go that far; but I propose that all be invited to take the oath; and I believe that all then would take it.

MR. SINSEL. Mr. President, if it is in order, I move an indefinite postponement of this subject.

MR. BROWN of Kanawha. I second that if there is anything before the house. I do not so understand it, though.

MR. LAMB. In order that there may be something regularly before the house—if the gentleman will withdraw his motion for a moment?

MR. SINSEL. I will, sir.

MR. LAMB. I move that the members and officers of this Convention do now proceed to take the oath required by the ordinance for the reorganization of the state government.

MR. SINSEL. I now move, Mr. President, the indefinite postponement of that motion.

Mr. Lamb called for the yeas and nays and the call was sustained.

MR. WILLEY. What is the motion?

MR. SINSEL. The indefinite postponement.

MR. WILLEY. I understand the rules of the June convention make that not debatable.

MR. STUART of Doddridge. It is not debatable.

MR. WILLEY. If it is not, I would only say, sir, that sixty or seventy citizens of our county voluntarily sent in an oath to court, and had it recorded of fidelity to the government of the United States, and they are the only men that have caused any trouble since (Laughter).

MR. DILLE. I understand the rules of the June convention were submitted to a committee.

MR. VAN WINKLE. As I understand the action in regard to them, it was that the rules of the June convention be adopted for the government of this Convention, and that a committee be appointed to suggest any amendments they might deem necessary.

THE PRESIDENT. The Chair so understood the gentleman from Wood.

The vote on Mr. Sinsel's motion was then taken and resulted:

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Dille, Dolly, Hubbs, Montague, Mahon, O'Brien, Parsons, Sinsel, Stevenson of Wood, Stuart of Doddridge, Willey and Warder—15.

NAYS—Messrs. Mr. President (Hall of Mason), Brumfield, Battelle, Chapman, Caldwell, Cassady, Dering, Hansley, Hall of Marion, Haymond, Harrison, Hervey, Hagar, Irvine, Lamb, Lauck, Powell, Parker, Paxton, Pomeroy, Simmons, Stewart of Wirt, Soper, Sheets, Trainer, Van Winkle, and Wilson—27.

So the motion to indefinitely postpone was lost.

The question recurring on the original motion, it was agreed to.

MR. VAN WINKLE. Mr. President, with a view of getting something to do, tomorrow, we had better call up the resolution in relation to the appointment of the business committee.

MR. STUART of Doddridge. The next thing will be to do the swearing.

MR. VAN WINKLE. If it is the will of the Convention to pass such a resolution, raising a committee to report the proper order of business here, I had better call up the resolution so that if passed this evening we may have something to do before us tomorrow. I will, therefore, move now that the resolution that was laid on the table in reference to the committee to report the proper division of business here, be taken up for consideration.

MR. STUART of Doddridge. My remark was this: that we had now passed a resolution requiring this oath to be taken, and before we go further, it requires the oath should be taken.

MR. VAN WINKLE. The resolution does not require anybody to take the oath, but merely suggests that they do so.

Mr. Van Winkle then moved to take up the resolution indicated by himself and it was agreed to. It was reported by the Secretary as follows:

RESOLVED, That a committee of nine be appointed to report the best method of bringing before the Convention such provisions as may be proposed to be inserted in the Constitution.

MR. VAN WINKLE. If a committee could be appointed now, it might have a meeting in the morning before the Convention met and might be ready to report in the morning. It will probably take several of them. Until some of these committees are appointed, or until they report, the Convention will have nothing to do. I move that the resolution be put upon its passage.

The resolution was adopted.

The President announced the committee as follows: Messrs. Van Winkle, Brown of Kanawha, Hall of Marion, Irvine, Sheets, Parker, Chapman, Caldwell, and Hagar.

MR. DILLE. There are some of the members of the Convention who are not familiar with the rules of the June convention, and they have had no opportunity to examine them. I would suggest the propriety of having those rules published in some form or other so as to be distributed among the members. I do not know whether there are any already published or not. Probably some gentleman can inform me?

MR. VAN WINKLE. They are out of print.

MR. LAMB. I understand Mr. Campbell says he can supply them.

I would suggest, Mr. President, that the Secretary now call the counties, and administer the oath to as many of the members from these counties separately as may come forward to take it.

THE PRESIDENT. The motion of the gentleman from Preston has not been disposed of.

MR. DILLE. It was a mere suggestion on my part.

MR. LAMB. The Secretary is a notary public and duly authorized to administer the oath.

MR. WILLEY. I would be very much pleased myself to have initiated our proceedings by a solemn invocation of the Divine blessing. We are in the midst of extraordinary scenes and occurrences. The foundations of society are heaving. The spirit of discord is breathing upon the great deep of public sentiment. The ship of state on the waves is rolling. I confess, sir, that in a body like this, in the midst of the darkness and destruction and distresses around us, there is but one truth that affords me unalloyed satisfaction: that is that God reigns. And whether we acknowledge that truth or not, the fact still exists. I think it would be proper, in times like these and in a body like this, to introduce our proceedings daily by an humble appeal to Almighty God for His blessing and His direction in our council and for the issue in wisdom and in righteousness.

I move you, therefore, sir, that the clergy of this city be requested, in the order of their names alphabetically, to open our meetings daily with prayer.

MR. VAN WINKLE. I understand, Mr. President, there are five members of this body who are clergymen, if there are not more; and I ask the gentleman to accept an amendment to include them.

MR. WILLEY. Certainly.
The motion was agreed to.

All the members present then came forward and assumed the oath prescribed in the ordinance for the reorganization of the state government.

MR. SINSEL. Would it not be well for us to take up the question in relation to those two members. They have no votes here yet. I move we now take it up.
The motion was agreed to. The Secretary read the credentials of the two members, Messrs. Walker and Cassady.

MR. DILLE. Is there any evidence before the committee that these men whose names are signed to these papers are citizens of the counties as represented?

MR. BROWN of Preston. There was no evidence of that kind before the committee.

MR. SINSEL. There was no evidence before the committee more than the simple statement of these gentlemen.

MR. VAN WINKLE. I move that the subject be referred back to the Committee on Credentials, and that in the meanwhile the gentlemen be invited to take seats as members but without the privilege of voting until this matter is determined.

MR. STUART of Doddridge. It does seem to me we have about all the evidence we can have. We had better pass upon it, because it will consume time hereafter. So far as I am concerned I am as fully advised of the question as I can be. I believe it is elicited that the signers of these petitions are citizens of the counties as represented. Well if that be the fact of the case what other testimony do you expect to get? We will have to pass on this question sometime, and why not now? I for one member of this body feel perfectly willing to admit those members to seats from the fact that they have done everything that possibly can be done. I am exceedingly anxious to include those counties in the proposed new state. These people desire to be represented; and if not through these men they would not be represented at all. Our labors, I understand, are to be consummated within the space of some twenty days. We have got a constitution to make; it has got to be laid before the people; they have got to investigate it—see it as a matter of course; we have got to perform our labors to comply with the requisitions of the ordinance, within twenty days. Now, sir, this question is up, and I think we had better settle it at once. If these counties are to be represented here at all it can be only through these men who are sent here by these petitions; and I for one am willing to grant them seats in this body.

I move that the gentleman from Fayette (Mr. Cassady) be admitted to a seat in this body.

MR. VAN WINKLE. I will withdraw my motion.

MR. WILLEY. These are revolutionary times. The house is on fire and we cannot exactly be very technical. I think these counties have done about the best they could. The delegate is endorsed as a responsible gentleman; the signers are endorsed as respectable; and above all these considerations it occurs to me that whatever our labors are here they have to be consummated by taking the sense of Fayette county. We cannot do them any injury. I would like them to be fully represented. All we can do will be to present to them a constitution for their adoption or rejection; and under all the circumstances, I feel very much inclined to vote for their admission. I think I shall, sir, at a venture.

The motion to admit Mr. Cassady was agreed to.

MR. STEVENSON of Wood. I move that the gentleman from Wyoming be received as a delegate.

The motion was agreed to.

MR. WILLEY. I move, sir, that the Convention do now adjourn till nine o'clock tomorrow morning.

MR. VAN WINKLE. I would suggest that it be eleven o'clock, for there will be nothing before us when we come together.

MR. WILLEY. I accept the suggestion as an amendment.

MR. STEVENSON of Wood. I move by way of amendment that be the standing hour of meeting until otherwise ordered.

The amendment was agreed to, and the Convention adjourned.

II. WEDNESDAY, NOVEMBER 27, 1861.

Prayer by Rev. David E. Hervey, of the Presbyterian Church.

Mr. Hall, the secretary-elect, appeared, took the oath and assumed the duties of his office.

Minutes read and approved.

MR. LAMB. Mr. President, I understand from the Secretary that he was mistaken yesterday in stating to the gentleman from Wood that a copy of the rules could be furnished. Those copies are not forthcoming and I move that we direct one hundred copies to be printed for the use of the Convention. It is necessary also to print rolls for the purpose of taking the ayes and noes and that may as well be ordered at the same time.

Copy of Rules printed under this order:

RULES AND REGULATIONS OF THE CONSTITUTIONAL CONVENTION

1. The President of the Convention shall take the chair every day precisely at the hour to which the convention shall have adjourned the day preceding; shall immediately call the members to order, and on the appearance of a quorum, shall cause the journal of the preceding day to be read for correction. He shall preserve *order and decorum;* may speak to points of order in preference to other members; rising from his seat for that purpose; shall decide questions of order, subject to an appeal to the Convention; shall daily examine and correct the journal before it is read; shall have a general direction of the hall; may call any member to the chair to perform its functions not exceeding one day; shall set apart seats in the hall for the members of the general assembly, and of the executive of this State, for the judges of this State and of the United States; and for such other persons as he may think proper to invite within the hall; for any disturbance of disorder amongst spectators in the hall or gallery, he or the chairman of the committee of the whole, (as the case may be) shall have power to order the same to be cleared; he shall appoint all committees not otherwise ordered; shall promptly call members to order for transgressing the rules; and when two members rise at the same time to address the Chair; shall name the one who is to speak, taking care however always to allow a member who rises and addresses the Chair first, to speak first.

2. No member shall absent himself from the service of the Convention, unless he be sick and unable to attend.

3. A member about to speak or deliver any matter to the Convention, shall rise *from his seat,* and without advancing, shall, with due respect address, *"Mr. President,"* confining himself strictly to the point in debate, avoiding all personality, and indecent and disrespectful language.

4. No member while addressing the Convention, shall call another member by name.

5. No member shall speak more than *twice* to the same question without leave, nor more than *once,* until every other member intending to speak shall have spoken.

6. The rules of parliamentary practice, comprised in Jefferson's Manual, shall govern the Convention in all cases to which they are applicable, and consistent with the rules and orders of the Convention.

7. The Secretary shall draw up the journals of the Convention daily, which, after being examined and corrected by the President, and read to the Convention, shall be printed, and one copy shall be delivered to him and one to each member without delay. He shall not suffer any member, or other person, to take any records or papers from his table, or out of his custody.

8. A question being once determined, must stand as the judgment of the Convention, and shall not again be drawn into debate.

9. While the President is reporting or putting a question, none shall entertain private discourse, read, stand up, walk into, or out of the house; and when a motion to lay on the table is made, there shall be no debate upon that, or any incidental question arising out of it, including as appeal.

10. No member shall vote upon any question touching his own conduct or privilege as a member, nor in any other case, where he was not in the hall, when the question was put, either in the house or committee of the whole.

11. A majority of the members of the Convention shall be necessary to transact business, and every question shall be determined according to the vote of the majority of the members present. Any smaller number shall be sufficient to adjourn, and fifteen to call a house, and send for the absent, and make any order for their censure or discharge.

12. A majority of any committee shall be necessary to transact business.

13. Any person who shall tamper with any witness in respect to his evidence to be given in this Convention, or before any of its committees, or who shall directly or indirectly attempt to deter or hinder any person from appearing, or giving evidence, shall be deemed to have committed a high crime, and shall be punished accordingly.

14. No person shall be taken into custody by the sergeant-at-arms on any complaint of a breach of privilege, until the matter of such complaint shall be examined by a committee and reported to the house.

15. The sergeant's fees shall be as follows: for taking a person into custody two dollars; for every day detained in custody two dollars; for sending a messenger to take any person in custody by warrant from the President, eight cents per mile for going and the same for returning.

16. On a call of the house, the doors shall not be shut against any member until his name is once called and noted as an absentee.

17. When any member shall remain in his seat two days after leave of absence, such leave shall be void.

18. No business shall be introduced, taken up, or considered, after 12 o'clock, until the orders of the day shall be disposed of, except that an order of the day commenced may continue from day to day until finished, to the exclusion of other orders.

19. Any member (seven others concurring) shall have a right to demand the ayes and noes upon any question, at any time before it be put, and in such case, the names of the members shall be called by the secretary, and the ayes and noes entered respectively on the journal; and the question decided as a majority of votes shall thereupon appear. But after the ayes and noes are separately taken, and before they are counted and entered on the journal, the Secretary shall read over the names of those who voted in the affirmative, and those who voted in the negative, in order that any mistake in the listing of names and votes may be corrected.

20. The petitioner who contests the election of a member returned to serve in this Convention, shall receive his wages only from the day on which he is declared duly elected.

21. Select committees shall be composed of not less than five nor more than thirteen.

22. In elections, but one vacancy shall be filled at a time, and if, in any election, no person receive a majority of the whole vote upon the first ballot, the person having the smallest number of votes shall not be voted for upon the next ballot, and so on each succeeding ballot, until some person shall have a majority of the whole.

23. In all votes of the house, except by ayes and noes, the President may, and at the instance of any member shall, cause the house to be divided; and if upon the rising of the members in the affirmative, a doubt still exists with the President or any member, on which side the majority is, the members in the affirmative shall first be counted, and then those in the negative, either by the President, or at his request by two members of opposite opinions upon the question.

24. The documents ordered to be printed by the Convention shall be printed on paper of the same size of the journals of the Convention, and a copy shall be bound with each journal, to be furnished to the members at the end of the session; and it shall be the duty of the printer of the house to print one hundred additional copies of each document for the use of the Commonwealth.

25. No committee shall sit during the sessions of the Convention without special leave.

26. If any member, while speaking, transgress the rules of the Convention, the President shall, or any member may, call to order; and the member so called to order shall immediately sit down, unless permitted to explain, and the Convention shall, if appealed to, decide on the case, but without debate. If there be no appeal, the decision of the Chair shall be submitted to; if the decision be in favor of the member, he shall proceed—if against him, he shall not proceed; if any other member object, without leave of the Convention; and if the case require it, he shall be liable to the censure of the Convention.

27. If a member be called to order for words spoken in debate, the member calling him to order, shall repeat the words excepted to, and they shall be taken down in writing by the Secretary; and no member shall be held to answer, or be subject to the censure of the Convention for words spoken in debate, if any other member has spoken, or other business has intervened, before exception to them shall have been taken.

28. While a member is speaking, none shall entertain private discourse, or shall otherwise disturb him, or pass between him and the Chair.

29. Every member shall remain uncovered during the sessions of the Convention; and no member shall remain by the Secretary's table while the ayes and noes are calling, or while the Convention is voting, or the Secretary calling or counting the votes, in any election.

30. Every member who shall be in the house when a question is put shall vote, unless excused; and all motions to excuse, in such cases, shall be made before the house divides, or before the call for the ayes and noes is commenced; and any member requesting to be excused from voting, may make a brief verbal statement of his reasons, and the question shall then be taken without further debate.

31. Every motion shall be reduced to writing, if the speaker or any member desires it.

32. When a question is under debate, no motion shall be received but to adjourn, for the previous question, to lie on the table, to postpone indefinitely, to adjourn the question to a different day to commit, or amend; which several motions shall have precedence in the order in which they are arranged.

33. On a motion or call for the previous question there shall be no debate, but unless sustained by twenty members, indicated by rising, the President shall not put it to the vote, but if so sustained, the previous question shall be put immediately; and all incidental questions of order arising after a motion is made for the previous question, and pending the motion, shall be decided, whether an appeal or otherwise, without debate.

34. Any member may call for the division of a question, and it shall be, thereupon, divided, if it comprehend propositions in substance so distinct that one thing taken away, a substantive

proposition shall remain for the decision of the house—but a motion to strike out being lost, shall not preclude a motion to strike out and insert.

35. When the Convention is about to rise, every member shall keep his seat until the President shall have announced the adjournment.

The following resolutions were adopted by the Convention on the 26th day of November, 1861, and are added to the foregoing for the convenience of the members:

RESOLVED, That all resolutions and propositions containing, or relating to, provisions to be inserted in the Constitution shall be referred to the appropriate standing committee without debate, and be printed for the use of the Convention.

RESOLVED, That every report made by a standing committee shall, in its turn, be considered, and be open to amendment, section by section, but the vote on the passage of any section or clause shall not be final. The question shall recur on the passage or adoption of the whole report as amended, and motions to strike out and to insert shall be in order.

E. R. HALL, Secretary.

The motion was agreed to.

MR. VAN WINKLE from the Committee to Report on Order of Business, presented the following:

The committee appointed "to report the best method of bringing before the Convention such provisions to be inserted in the Constitution as may be proposed," respectfully recommend the adoption of the following resolutions:

RESOLVED, That the President appoint the following standing committees, each of which shall choose its own chairman:

1. A Committee on Fundamental and General Provisions, to consist of nine members, who shall consider and report suitable provisions to be inserted in the Constitution, to give the government it creates a free and republican character; to protect minorities, and to secure popular rights, including provisions relating to suffrage and the basis of representation.

2. A Committee on County Organization, to consist of seven members, who shall consider and report suitable provisions for the administration of the local affairs of the several counties, the proper officers for each, their terms of service, and the mode and time of their election and appointment.

3. A Committee on the Legislative Department, to consist of seven members, who shall consider and report the proper numbers of representatives in each branch of the general assembly,

the principles on which representation shall be apportioned, and a present apportionment thereof, and such other provisions as are necessary to constitute the said department; and also a proper mode of apportioning representation in the House of Representatives of the United States, and an apportionment of the same under the census of 1860.

4. A Committee on the Executive Department, to consist of seven members, who shall consider and report such provisions as are necessary to constitute the said department.

5. A Committee on the Judiciary Department, to consist of seven members, who shall consider and report such provisions as are necessary to constitute the said department, including those relating to the judicial powers and jurisdiction of justices of the peace.

6. A Committee on Taxation and Finance, to consist of seven members, who shall consider and report suitable provisions on those subjects, and in reference to the assumption by the proposed new State of an equitable proportion of the debt of the State of Virginia, and what provision can and should be made for the payment of such proportion.

7. A Committee on Education, to consist of seven members, who shall consider and report suitable provisions in relation to that subject.

8. A Committee, to consist of seven members, to prepare a schedule to accompany the Constitution, providing for putting the same in operation, and containing such other suitable provisions as circumstances may require.

RESOLVED, That all resolutions and propositions containing, or relating to, provisions to be inserted in the Constitution, shall be referred to the appropriate standing committee without debate, and be printed for the use of the Convention.

RESOLVED, That every report made by a standing committee shall, in its turn, be considered and be open to amendment, section by section, but the vote on the passage of any section or clause shall not be final. The question shall recur on the passage or adoption of the whole report as amended, and motions to strike out and to insert shall be in order.

By order of the committee.

P. G. VAN WINKLE, Chairman.

MR. VAN WINKLE. Under ordinary circumstances, the motion would be, I suppose, to lay on the table and print; but when the Convention consider that until a report is had from one of these committees there can be no profitable business done here, instead of moving that this report be laid on the table and printed; I move that it now be considered, section by section. I think that members can thus distinctly understand each proposition; and they can move such amendments as they may see fit. It will be observed, of course, that this committee does not undertake to indicate what shall be in the Constitution in any instance whatever. It indicated the subjects which are absolutely necessary to be considered and fixed in that instrument. It has named some other subjects. It is, however, open to amendment if any gentleman sees fit to do so.

I move therefore, sir, that the report be taken up and considered, section by section.

The motion to consider the report was concurred in, and the Secretary proceeded with the reading. The sections were adopted *seriatim* to the eighth, inclusive; and the ninth was read.

MR. PAXTON. I would move to amend that by striking out the words "without debate." The Convention, of course, will have nothing before it until some of these committees are prepared to report; and I cannot see, therefore, why any proposition should not be open to discussion in the meantime. It occurs to me the amendment would be judicious.

MR. VAN WINKLE. Mr. President, the effect of the gentleman's motion, if carried, will be to have two debates on every subject that comes up. This is to facilitate business, and prevent unnecessary debate. A gentleman is desirous to have some sort of provision in the Constitution. He offers that provision; it is printed and distributed among the members, and referred to the committee having the subject in charge. The committee consider it, and if they approve it they will embody it in their report; if they do not approve it, the original proposer or any other gentleman may move its insertion. Then is the proper time for debate upon it. But if instead of that whenever a gentleman offers a proposition here, there is to be debate, it can only be on the question of reference. You cannot pass isolated propositions. This report, if adopted, signifies the mode in which business shall be done. The whole business in reference to the Constitution will be distributed to the committees. What question else could you make of it except to refer? Will a gentleman get up here and make a proposition and move that it shall be inserted in the Constitution without reference to any other proposition? As I said in the beginning it will anticipate two debates upon every proposition that comes up. Let for example, the legislative department be perfected by the committee and come up. If they have not inserted such propositions as any gentleman thinks ought to be, he can move their insertion; and that brings on the debate at the proper time. Certainly that is a more natural order of business, and will certainly save a good deal of time.

I trust the amendment will not prevail.

MR. WILLEY. I hope the remarks of the gentleman from Wood will prove entirely satisfactory to the Convention. If we get up rambling debate without reference to final action, we will go very far beyond the limits which the convention seem to have assigned to the session of this body, and will have accomplished nothing by it in the end. Because these identical questions will have to be discussed again when they come up for final action. It has been deemed very material that we should consummate our work with as much expedition as possible. Now, sir, we will not get away for two months unless some such proposition as this is adopted. If we are to discuss questions which have to be discussed again, we shall not get away for two months. Besides, I would suggest to my friend from the county of Ohio, in answer to his remark that this body will have nothing to do till the committees report, that this body consists of about forty members; that there are seven committees, one composed of nine and all the rest of seven each; and that to constitute these committees, we will have to detail all the members; and that every member will be engaged until some report comes in for our action.

MR. PAXTON. I withdraw the amendment, after the explanation.

The section was adopted.

The Secretary reported the tenth and last.

MR. VAN WINKLE. I wish to explain that the committee had in consideration two modes of doing business. One was that of going into committee of the whole, to which there is serious objection. It produces delay. The convention that met here in June did not go into committee of the whole, but had a provision something like this introduced here. The objection to the committee of the whole is that where a long article is to be passed and an amendment is made to a section of it, it necessitates going back and making an amendment in the preceding part of it. This proposes to have all the benefits of the committee of the whole without its inconveniences and disadvantages. Say the committee on the legislative department makes its report. It will of course constitute an article in the Constitution and be divided into convenient sections according to the subjects. They will be taken up; each section will (be) considered and amended until it is, to use a common expression, amended into shape. A second will then be taken up and proceeded with in the same way, and so on till the article is completed. Then we may find that the adoption of certain amendments in the latter part necessitate some change in the first, and this can be made before the article is adopted as a whole. Also it gives this advantage: that even the opponents of a section will be willing that the friends of its adoption should perfect it by amending in such way as they may think best. Then, when the whole article has been gone over this way, and the question comes up, shall the whole pass? any gentleman is at liberty, as he would not have been before, to move to strike out any section or clause, or move to insert any, that he may think ought to be in. In that way, sir, I think every advantage that is derived from a committee of the whole will be realized; that it will be a sufficiently deliberate way; that it will expediate the business and enable us to express the sense of the Convention without difficulty or misunderstanding.

The report was adopted.

MR. STEVENSON of Wood. I desire to offer the following resolution:

RESOLVED, That a Committee on Printing and Expenditures, to consist of three members, be appointed, who shall arrange for all printing directed by the Convention, at rates not greater than those authorized by the general assembly at their late session, and shall audit all claims and bills against the Convention and certify the same for payment.

The resolution was adopted.

MR. VAN WINKLE. Tomorrow is a thanksgiving day, appointed by the authority of the State, and no doubt every member would wish to observe it. I would therefore move that when this Convention adjourn today it will adjourn to meet again on Friday morning at the usual hour.

The motion was agreed to.

MR. VAN WINKLE. I made that motion, sir, preparatory to making the remark that it will require some time for the President to appoint these committees and he will perhaps need the assistance of some of the members in doing it. I was going to move, then, that the Convention should take a recess until afternoon to give the President an opportunity of making up these committees.

And I would say that I believe it is considered entirely proper for any member of the Convention who wishes to be appointed on a certain committee to indicate that fact to the President.

I will, therefore, move that we take a recess until five o'clock.

MR. STEVENSON of Wood. I would suggest that I think four o'clock would suit the members better. I do not know how it is with the others, some of us take supper at half-past five. I am willing to forego mine, though, if the rest are.

MR. VAN WINKLE. I will accept the amendment for the sake of the gentleman's supper (Laughter).

MR. LAMB. It is a serious task, and the President ought to have plenty of time.

MR. STEVENSON of Wood. It would probably suit the gentleman from Wood better at seven and then we can both get our suppers (Laughter).

MR. VAN WINKLE. I protest that I am entirely serious with regard to gentlemen getting their suppers—and my own too. I will alter the motion to make it half-past four.

The motion was agreed to.

FOUR-THIRTY O'CLOCK, P. M.

The President announced the following standing committees raised under the resolution hitherto adopted:

Committee on Fundamental and General Provisions:—Peter G. Van Winkle, Gordon Battelle, James H. Brown, Waitman T. Willey, Chapman J. Stuart, Robert Irvine, W. W. Brumfield, Abijah Dolly, James S. Cassady.

Committee on County Organization:— Joseph S. Pomeroy, John A. Dille, A. D. Soper, Thos. W. Harrison, E. S. Mahon, Dudley S. Montague, Peter G. Van Winkle.

Committee on the Legislative Department:— Daniel Lamb, Harmon Sinsel, James H. Brown, H. D. Chapman, Chapman J. Stuart, J. J. Brown, Josiah Simmons.

Committee on the Executive Department:—E. H. Caldwell, H. Dering, Wm. E. Stevenson, Lewis Ruffner, G. F. Taylor, S. N. Hansley, E. J. O'Brien.

Committee on the Judiciary Department:—Waitman T. Willey, James H. Brown, Ephraim B. Hall, Robert Irvine, C. J. Stuart, John A. Dille, B. F. Stewart.

Committee on Finance and Taxation:—James W. Paxton, J. J. Brown, R. L. Brooks, H. Dering, H. Haymond, James Hervey, John M. Powell.

Committee on Education:—Gordon Battelle, William E. Stevenson, Robert Hagar, Thomas H. Trainer, J. W. Parsons, William Walker, George Sheets.

Committee on Schedule to the Constitution:—Ephraim B. Hall, R. W. Lauck, Grenville Parker, W. W. Warder, A. J. Wilson, T. W. Harrison, Joseph Hubbs.

Committee on Printing and Expenditures:—William E. Stevenson, James W. Paxton, A. D. Soper.

MR. VAN WINKLE. It is understood, I presume, that the gentlemen first named on these committees will act as chairmen, until they meet and choose chairmen themselves, according to the provisions of the resolution.

THE PRESIDENT. That was the understanding and intention of the Chair.

MR. VAN WINKLE. I would then ask my committee to meet on Friday morning at nine o'clock in the room in the northwest corner of the building. I apprehend that committee could make a partial report Friday. At all events it will be necessary for some matters to be acted on by it to be settled before the other committees can progress very far. Perhaps by that time the sergeant-at-arms will be able to procure suitable rooms for all the committees. That committee will precede in its business some of the others and it had better meet at once.

MR. STEVENSON of Wood. I would suggest to the Committee on Printing to meet me here a few moments after the Convention adjourns.

MR. SINSEL. I have prepared a little work here; which I wish referred to the appropriate committee.

Mr. Sinsel presented the following paper which was read by the Secretary and referred:

JUDICIARY DEPARTMENT

1. There shall be a Supreme Court of Appeals, circuit courts, and magisterial courts. The jurisdiction of these tribunals, and of the judges and magistrates thereof, except so far as the same is conferred by this Constitution, shall be regulated by law.

JUDICIAL DIVISIONS

2. The State shall be divided into three divisions and eight circuits and each county shall be divided into at least four, and not more than eight magisterial districts.

COURT OF APPEALS

3. For each division a judge shall be elected by the voters thereof, who shall hold his office for the term of twelve years, unless sooner removed in the manner prescribed by this Constitution. He shall, at the time of his election, be at least thirty and not over fifty-six years of age, and during his continuance in office shall reside in the division for which he was elected. Of those first elected, one, to be designated by lot, shall remain in office for four years only, and one other, to be designated in like manner, shall remain in office for eight years only.

4. The Supreme Court of Appeals shall consist of three judges so elected, any two of whom may hold a court. It shall hold three sessions annually of three months each, unless the business is sooner disposed of. One session shall be at the seat of government, one at the city of Wheeling, and one at Charleston. It shall have appellate jurisdiction only, except in cases of habeas corpus, mandamus and prohibition. It shall not have jurisdiction in civil cases when the matter in controversy is less than one thousand dollars, except in controversies concerning the title or boundaries of land, the probate of a will, the appointment or qualification of a personal representative, guardian, committee or curator, or the right of a corporation or county to levy tolls or taxes, and except in cases involving freedom, or the constitutionality of a law.

5. When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, the reasons therefor shall be stated in writing and preserved with the record of the case.

6. The officers of the Supreme Court of Appeals shall be appointed by said court, or by the judges thereof in vacation. Their duties, compensation and tenure of office shall be prescribed by law.

CIRCUIT COURTS

7. For each circuit a judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless

sooner removed in the manner prescribed by this Constitution. He shall, at the time of his election be at least twenty-five and not over fifty-six years of age, and during his continuance in office shall reside in the circuit of which he is judge.

8. A circuit court shall be held at least four times a year by the judge of each circuit, in every county of this Commonwealth wherein a circuit court is now or may hereafter be established. Judges may exchange circuits with each other for one or two terms. Each term of a circuit court shall commence on Monday, and remain in session for at least two weeks, unless the business is sooner disposed of.

9. The voters of each county shall elect a clerk of the circuit court for said county, whose term of office shall be four years. His duties and compensations shall be prescribed by law.

MAGISTERIAL COURTS

10. For each district a magistrate shall be elected by the voters thereof, who shall hold his office for the term of four years, unless sooner removed. He shall, ex-officio, be the overseer of the poor for his district. He shall hold a court at least once in each month, in his district, and at the same place each time, and have jurisdiction of all sums where the matter in controversy, exclusive of interest and costs, does not exceed one hundred dollars in value. He shall keep a record of all his proceedings, and be allowed to charge the parties the same fees that clerks of the circuit courts shall be allowed to charge for like services. He shall reside in the district for which he was elected.

11. The parties, if they desire it, shall have the benefit of legal counsel, and the right of appeal to the circuit court. If the matter in controversy exceeds twenty dollars in value, exclusive of costs, the defendant, upon giving security for costs, may have the case certified to the circuit court for trial.

12. They shall meet semi-annually at the court house of their county, and adjust and audit all claims against the same, keeping the claims for the benefit of the poor in a separate book. They shall do their own clerking, and certify the claims so allowed by them to the circuit court of the county, which court, at its spring term, shall order a levy for the same.

GENERAL PROVISIONS

13. Judges and magistrates shall be commissioned by the governor, and during their term of service shall not hold any other office or appointment, or public trust, and the acceptance thereof shall vacate his judicial office. The salary of the judge of the Supreme Court of Appeals shall be two thousand dollars per annum, and that of a circuit judge shall be seventeen hundred dollars per annum. They shall not receive any other allowance from the State.

14. Judges, magistrates, attorneys for the Commonwealth, surveyors, clerks of courts, sheriffs, commissioners of the revenue and constables may be removed from office, by indictment and conviction thereof, for malfeasance, misfeasance or gross neglect of official duty. When an indictment is found against a judge of a circuit court, the clerk of the court where the indictment was found shall issue a summons to a judge of an adjoining circuit to attend at the next term of the court and preside during the trial, and if found guilty of either of the above named offenses, in addition to the penalty prescribed by law for such offenses, he shall declare his office of judge vacant. The clerk shall immediately, if no appeal be taken, transmit a copy of said indictment and judgment of the court to the governor of the State, who shall immediately issue a writ of election, to fill the unexpired term of such judge.

15. Judges of the Supreme Court of Appeals shall be indicted in the circuit courts, with the right of appeal, and upon the trial of the appeal, a circuit judge or judges shall preside with the other judge or judges of the court of appeals, so that three judges shall hold the court: and if found guilty of either of the above named offenses, his punishment shall be the same as circuit judges, and his office declared vacant and filled in like manner. When the office of judge is declared vacant by the court of appeals, the clerk of said court shall certify a copy of the indictment, appeal and judgment to the governor of the State, who shall issue a writ of election to fill the unexpired term of judge.

16. For each county an attorney for the Commonwealth shall be elected by the voters thereof, who shall hold his office for the term of four years. He shall, in addition to his other duties, be counsel for the overseers of the poor of his county. He shall receive from the State a salary, where the population does not exceed five thousand, two hundred dollars; if the population is five thousand and not over ten thousand, two hundred and fifty dollars; if over ten thousand, he shall receive three hundred dollars per annum. He may receive a fee of the persons convicted by him, to be ascertained by law.

17. For each county a surveyor shall be elected by the voters thereof, who shall hold his office for the term of six years. His duties and compensations shall be prescribed by law. For each county a sheriff shall be elected by the voters thereof, who shall hold his office for the term of two years, and he shall not be eligible a third time unless all of the public due shall have been first collected and paid by him to the proper persons. His duties and compensations shall be prescribed by law. The voters of each district shall elect a constable for the same, whose duty and compensation shall be prescribed by law.

18. Judges and all other officers, whether elected or appointed, shall continue to discharge the duties of their respective offices after their terms of service have expired, until their successors are qualified. When a vacancy shall occur in the office of clerk

of the circuit court, such court may appoint a clerk *pro tempore,* who shall discharge the duties of the office until the vacancy is filled.

19. Writs shall run in the name of the Commonwealth of Western Virginia, and be attested by the clerks of the several courts. Indictments shall conclude: against the peace and dignity of the Commonwealth.

20. The legislature shall provide for the compensation of jurors.

MR. VAN WINKLE. I wish to offer the following:

RESOLVED, That the Committee on Printing, &c., enquire and report as to the propriety of employing a proper person to report, officially, the debates of the Convention, and the probable expense thereof, and of printing the same in book form.

MR. BROWN of Preston. I have a resolution to offer, Mr. President:

It was reported as follows and referred:

RESOLVED, That every white male citizen of the Commonwealth, who shall have attained the age of 21 years, and who shall have resided therein one year, and who shall have resided in the county in which he offers to vote ten days previous to his offering to vote, and who shall have previously paid the state or county tax with which he was assessed the previous year, shall be entitled to the right of suffrage in this Commonwealth.

MR. LAMB. It is very desirable that any propositions which members may have to submit to the different committees should be handed in at the earliest moment possible in order that they may receive consideration. If any gentlemen have propositions prepared I hope they will produce them this evening.

MR. STEVENSON of Wood. We are at a stand still for want of business, I move we adjourn.

The motion was agreed to, and the Convention adjourned till Friday at the usual hour.

III. FRIDAY, NOVEMBER 29, 1861.

Prayer by Rev. S. R. Brockunier, of the M. E. Church.

Minutes read and approved.

MR. PAXTON offered the following:

VOTING BY BALLOT

RESOLVED, That voting by ballot is the mode best calculated to secure at all popular elections an independent and untrammeled expression of the people's will, so essential to the maintenance of free government.

MR. STEVENSON of Wood, the following:

ARTICLE 1.—On Elections.

Section 1. In elections by citizens, every white freeman of the age of 21 years, having resided in this State one year, and in the election district where he offers to vote, ten days immediately preceding such election, and within two years paid a state or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector; but a citizen of the United States, who had previously been a qualified voter of this State, and removed therefrom, and returned; and who shall have resided in the election district, and paid taxes, as aforesaid, shall be entitled to vote, after residing in the State six months: Provided, that white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the State one year, and in the election district ten days, as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

Sec. 2. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote *viva voce*.

Sec. 3. Electors shall in all cases, except treason, felony, and breach of surety of the peace, be privileged from arrest during their attendance on elections, and in going to and from them.

MR. DERING, the following:

BONDS

RESOLVED, That the legislature shall not pledge the faith of the State for the payment of any bonds or contracts, or obligations, for the benefit or use of any person or persons, corporations or body politic whatever.

RESOLVED, That the Committee on Education inquire into the expediency of inserting a provision in the Constitution for the establishment of a general free school system throughout the Commonwealth.

RESOLVED, That no capitation tax shall be imposed upon, or collected from, any citizen of this State until they shall have attained the age of twenty-one years.

MR. BATTELLE, the following:

VOTING BY BALLOT

RESOLVED, That the Committee on Fundamental and General Provisions be requested to inquire into the expediency of requiring all elections by the people to be by ballot.

MR. POWELL, the following:

GOVERNOR'S SALARY

RESOLVED, That the Committee on the Executive Department, be requested to inquire into the expediency of fixing the salary of the governor at a sum not exceeding $2,500 per annum.

MR. PARKER, the following:

QUALIFICATION OF VOTERS

Every white male citizen of the United States, of the age of twenty-one years, who has been a resident of this State for one year, and of the county, city or town where he offers to vote for six months next preceding an election, and who shall have previously paid or tendered all annual capitation taxes, due and payable, of two dollars each, (the one-half thereof to be applied to the support of public free schools, and the balance towards the construction and maintenance of public highways, the latter to be paid in money or labor, at the option of the person paying) and who shall have taken an oath to support the Constitution of the United States, and of this State, and no other person, shall be qualified to vote for members of the general assembly, and other officers elective by the people. And no person shall have the right to vote who is of unsound mind, or a pauper, or who is guilty of having given or tendered, or aided in giving or tendering to any person any money, intoxicating liquor or other thing, except counsel and advice, with intent to influence votes at any election held under this Constitution; and the person accepting any such bribe shall also be disqualified from voting thereafter; and no person who shall be in *actual* rebellion, committing treason against the government, of this State, or the government of the United States, or who shall have been convicted of treason, committed against either of these governments, or of any other infamous offence, shall be allowed to vote at any election held under this Constitution.

MR. HERVEY, the following:

ARTICLE III.—Qualification of Voters

Sec. 1. Every white male citizen of the Commonwealth, of the age of twenty-one years, who has been a resident of the State for one year and of the county, city or town, when he offers to vote, for six months next preceding an election, and no other person, shall be qualified to vote for members of the general assembly, and all officers elective by the people; but no person in the military, naval or marine service of the United States shall be deemed resident of this State by reason of his being stationed therein, but if any such person shall have been a resident of this State at the time he entered the service of the United States, and one year next preceding the time he offers to vote shall have expired, then any such person shall be considered a citizen within the meaning of this section and entitled to vote as herein provided. And no person shall have the right to vote who is of unsound mind, or a pauper, or who has been convicted of bribery in an election, or of any infamous offence.

Sec. 2. The general assembly, at its first session after the adoption of this Constitution, and afterwards as occasion may require, shall cause every city or town, the white population of which exceeds five thousand, to be laid off into convenient wards, and a separate place of voting established in each; and thereafter no inhabitant of such city or town shall be allowed to vote except in the ward in which he resides.

Sec. 3. No voter, during the time for holding any election at which he is entitled to vote, shall be compelled to perform military duty except in time of war or public danger, to work upon the public roads, or to attend any court as suitor, juror or witness; and no voter shall be subject to arrest under any civil process during his attendance at elections, or in going to and returning from them.

Sec. 4. In all elections, votes shall be given by ballot, and not *viva voce.*

MR. BROWN of Kanawha, the following:

SUPREME COURT

RESOLVED, That the Supreme Court of Appeals, ought to consist of three eminent jurists, to be elected by the legislature, and continue in office during good behavior.

MR. HAYMOND, the following:

BANKS

The banks of this Commonwealth, shall have the right to issue notes of any denomination less than five dollars.

And said banks shall be prohibited from receiving foreign notes or bills of exchange for collection; and all notes discounted by said banks shall be made payable at their counter.

MR. WILSON, the following:

INTERNAL IMPROVEMENTS

RESOLVED, That all appropriations made by the state legislature, for internal improvements, shall be submitted to the legal voters of the State, and if sanctioned by them, shall then be returned to the said legislature, and be sanctioned by them before it becomes a law.

All which were appropriately referred.

MR. VAN WINKLE. I am instructed by the Committee on Fundamental and General Provisions to ask permission, if they shall have a partial report prepared before another meeting of the Convention, to have it printed without first submitting it to the Convention. It will save time, sir, because otherwise we shall have to come here tomorrow with nothing to do but lay the report on the table and wait for it to be printed. If we have it printed it will give some time for consideration.

The motion was agreed to.

MR. PARKER offered the following:

THE JUDICIARY DEPARTMENT

The judicial power of the State shall be vested in a superior court, and such inferior courts as the general assembly shall by law establish and justices of the peace.

The superior court shall have jurisdiction in cases of law and equity throughout the State, to be defined by law, provided it shall be the court of last resort for the State, shall decide all questions of law arising therein, or coming thereto by appeal from any inferior court, or justice of the peace: shall have exclusive jurisdiction of all capital cases, at the trial of which, at least three of the justices thereof shall be present, and shall also have exclusive jurisdiction of writs of *habeas corpus, mandamus;* prohibition and *quo warranto.* Some one of the justices of said court shall hold, at least, two terms a year in each county of the State, for the trial of equity cases and questions of fact to be tried by a jury; and five, at least, of the justices thereof shall hold a term once a year at the seat of government, for the purpose of deciding matters of law and shall cause reports of their decisions to be published annually. The times for holding terms in the respective counties, and at the seat of government, shall be prescribed by law. The superior court, shall consist of a chief justice and such number of associate justices, as the general assembly shall by law prescribe, to be elected by the qualified voters of the State, for the term of twelve years, to receive competent salaries, to be determined by law, which salaries shall not be reduced during their continuance in office, and they shall be ineligible thereafter; provided that the person receiving the highest number of votes at the first election held for the purpose, under this Constitution, shall be the chief justice and hold his office for the term of twelve years, unless sooner removed in the manner prescribed in this Constitution; the persons receiving the two next highest number of votes shall be associate justices, and hold their office for the term of ten years; the persons receiving the two next highest number of votes shall also be associate justices, and hold their office for the term of eight years; and if more than four associate justices shall be prescribed by law, such additional justices shall be the persons receiving the next highest number of votes, and shall hold their office for the term of six years, subject always to removal in the manner prescribed in this Constitution. If at such election two or more persons shall receive an equal number of votes, it shall be determined by lot to which class they shall belong; all justices of the superior court, chosen afterwards to fill any vacancy that shall occur, or to fill any additional office of associated justice, which the general assembly shall prescribe the jurisdiction and duties of the several courts and of justices of the peace, subject only to the limitations contained in this article; also the mode of electing or appointing the judges of the inferior courts that shall be established, and justices of the peace, with their respective compensation, terms of office and qualifications, provided no judge of any inferior court that shall be established, shall be re-eligible, and provided further, that no inferior court shall be established, which shall be constituted on the plan of the present existing county courts of the State of Virginia.

ATTORNEY GENERAL, AND OTHER ATTORNEYS FOR THE STATE

There shall be an attorney general, and such other attorneys for the State, as shall be prescribed by law, who shall be chosen by the qualified voters of the State, and hold their office for the term of four years, and to be re-eligible. Their respective duties, qualification and compensation, shall be prescribed by law.

MR. WILLEY, the following:

1. There shall be a Supreme Court of Appeals and circuit courts. The jurisdiction of these courts, and of the judges thereof, except so far as the same is conferred by this Constitution, shall be regulated by law.
2. The State be divided into circuits, as follows:
3. The general assembly may, from time to time, re-arrange the said circuits; and after the expiration of ten years from the adoption of this Constitution may, from time to time, increase the number of circuits, so as the whole number shall never exceed

CIRCUIT COURTS

4. For each circuit a judge shall be elected by the voters thereof, who shall hold his office for the term of years, unless sooner removed in the manner prescribed by this Constitution. He shall, at the time of his election, be at least thirty years of age. During his continuance in office he shall reside in the circuit of which he is judge, and shall not be re-eligible to the same office during the next term.
5. A circuit court shall be held at least four times a year

by the judge of each circuit, in every county and corporation thereof, wherein a circuit court is now or may hereafter be established. But the judges may be required or authorized to hold the courts of their respective circuits alternately, and a judge of one circuit to hold a court in any other circuit.

COURT OF APPEALS

6. The Supreme Court of Appeals shall consist of three judges, who shall be elected by the voters of the Commonwealth, and shall, at the time of their election, be at least thirty-five years of age. They shall hold their offices for the term of twelve years, unless sooner removed in the manner prescribed in this Constitution.

7. The Supreme Court of Appeals shall have appellate jurisdiction only; except in cases of *habeas corpus*, *mandamus* and prohibition. It shall have no jurisdiction in civil cases when the matter in controversy, exclusive of costs, is less in value or amount than $ except in controversies concerning the title or boundaries of land, the probate of a will, the appointment or qualification of a personal representative, guardian, committee or curator; or concerning a mill, road, way, ferry or landing, or the right of a corporation or a county to levy tolls or taxes; and except in cases of *habeas corpus, mandamus* and prohibition, and cases involving freedom or the constitutionality of a law.

8. When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, the reasons therefor shall be stated in writing and preserved with the records of the case.

9. Special courts of appeals, to consist of three judges, may be formed of the judges of the Supreme Court of Appeals and of the circuit courts, or any of them, to try any case or cases which may come before the Supreme Court of Appeals, in respect to which any of the judges of said court may be so situated as to make it improper for him to sit on the hearing thereof.

10. Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office. The salary of a judge of the Supreme Court of Appeals shall not be less than $, and that of a judge of a circuit court not less than $ per annum; and each shall receive a reasonable allowance for necessary travel.

11. No judge, during his term of service, shall hold any other office, appointment, or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he, during such term, or within one year thereafter, be eligible to any political office.

12. No election of judge shall be held within thirty days of the time of holding any election of electors of President and Vice-President of the United States, of members of Congress, or of the general assembly.

13. Judges may be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the

members elected to such house must concur in such vote; and the cause of removal shall be entered on the journal of each house. The judge against whom the general assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

14. The officers of the Supreme Court of Appeals shall be appointed by said court, or by the judges thereof in vacation. Their duties, compensation and tenure of office shall be prescribed by law.

15. The voters of each county or corporation in which a circuit court is held shall select a clerk of such court and an attorney for the Commonwealth, whose term of office shall be years. The duties and compensations of these officers and the mode of removing them from office shall be prescribed by law; and when a vacancy shall occur in said offices the judge of the court held in the county or corporation where it occurs shall appoint a clerk or attorney for the Commonwealth (as the case may be) *pro tempore,* who shall discharge the duties of the office until the vacancy is filled.

16. At every election of a governor, an attorney general shall be elected by the voters of the Commonwealth for the term of years. He shall be commissioned by the governor, shall perform such duties and receive such compensation as may be prescribed for by law, and be removable in the manner prescribed for the removal of judges.

17. Judges (and all other officers, whether elected or appointed,) shall continue to discharge the duties of their respective offices after their terms of service have expired until their successors are qualified

18. Writs shall run in the name of the Commonwealth and be attested by the clerks of the several courts. Indictments shall conclude: Against the peace and dignity of the Commonwealth.

Which were referred.

The Convention then adjourned.

IV. SATURDAY, NOVEMBER 30, 1861.

Prayer by Rev. Gordon Battelle of the M. E. Church (member from Ohio).

Minutes read and approved.

MR. VAN WINKLE. Mr. President, the Committee on Fundamental and General Provisions were not able to get the report they proposed to submit into the hands of the printer in time to lay it before the Convention this morning. I am therefore instructed now to submit it and ask that it be laid on the table and printed.

The report was read as follows:

The Committee on Fundamental and General Provisions respectfully report in part, and recommend that the following provisions be inserted in the Constitution of the proposed new State.
By order of the committee.

P. G. VAN WINKLE, Chairman.

ARTICLE I.

Fundamental and General Provisions.

Section 1. The State of Kanawha shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

Sec. 2. Writs, commissions, and other publications issued under state authority, shall run in the name of, and official bonds shall be made payable to, The State of Kanawha. Laws shall be enacted in the name of the State of Kanawha. Writs shall conclude "against the peace and dignity of the State of Kanawha."

Sec. 3. The powers of government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.

Sec. 4. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

Sec. 5. Every citizen of the State shall be entitled to equal representation in the government, and in all appointments of representation, equality of numbers of those entitled thereto shall be preserved.

Sec. 6. The white male citizens of the State shall be entitled to vote at all elections held within the election districts in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason or felony, or who has been convicted of bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote, for six months, next preceding such offer, shall be permitted to vote while such disability continues.

Sec. 7. In all state, county and municipal elections the mode of voting shall be by *viva voce.*

Sec. 8. No voter during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process; or be liable to attend any court or judicial proceeding as suitor, juror or witness; or to work upon the public roads; or, except in time of war or public danger, to render military service.

Sec. 9. All citizens entitled to vote, and no other persons, may be elected or appointed to any state, county or municipal office, but the governor, lieutenant governor, attorney general, judges and senators must at the beginning of their terms of service, have respectively attained the age of twenty-five years and have been a citizen of the State for five years next preceding, or at the time of the adoption of this Constitution.

Sec. 10. Every person elected or appointed to any office or trust, civil or military, shall before proceeding to exercise the authority or discharge the duties of the same, make oath or affirmation that he will support the Constitution of the United States and the Constitution of this State; and every citizen of this State may in time of war, insurrection or danger, be required by law to make the like oath or affirmation, upon pain of suspension of his right of voting and holding office under this Constitution.

Sec. 11. In criminal prosecutions, and in suits at common law, where the value in controversy shall exceed twenty dollars, trial by jury shall be preserved. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishment inflicted. Warrants to search suspected places shall not be issued except upon probable cause supported by oath or affirmation. No citizen shall be arrested or otherwise deprived of his liberty without due process of law and the privilege of the writ of *habeas corpus* shall not be suspended, except when in time of invasion, insurrection or public danger the public safety may require it. No bill of attainder, or *ex post facto* law, or any law impairing the obligation of contracts, or abridging freedom of speech or of the press, shall be passed or executed. No religious test shall be required as a qualification to any office or public trust. Private property shall not be taken for public use without just compensation.

Sec. 12. The legislative, executive and judicial departments of the government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with, or exercise the powers of, more than one of them at the same time.

Sec. 13. Treason against the State shall consist only in levying war against it, or in adhering to its enemies giving them aid and comfort. Every attempt to justify and uphold an armed invasion of the State, or an organized insurrection within the limits thereof, by publicly speaking, writing or printing, or the publishing or circulating of any such writing or printing, during the continuance of such invasion or insurrection, shall be punished, according to the character of the acts committed, by the infliction of one or more of the penalties of death, imprisonment, fine, or confiscation of the real and personal property of the offender, as may be prescribed by law.

Sec. 14. No lottery shall be authorized by law; and the buying, selling or transferring of tickets or chances in any lottery shall be prohibited.

Mr. Caldwell. I give notice now that I have so much objection to the name of Kanawha that I will ask for a provision in the Constitution that when the Constitution is submitted to the people they will then determine whether the name shall be Western Virginia or Kanawha.

The report was adopted, laid on the table and ordered to be printed.

Mr. Sinsel offered the following:

RESOLVED, That voting be by ballot, and that the Secretary of the Commonwealth be required to furnish the tickets for the same, for each county of the Commonwealth.

RESOLVED, That for each county a recorder shall be elected by the voters thereof, who shall hold his office for the term of four years, unless sooner removed. He shall be the treasurer for the county. All persons shall be required to pay their taxes to him, in his office, from the first of June to the first of October. He shall give a list of those who fail to pay, within the specified time, to the sheriff for collection. The sheriff, when collecting such taxes, shall add five per cent, and collect the same. He shall receive for collecting such taxes eight per cent. The treasurer shall receive three per cent, on all moneys received and paid over by him. He shall from the first of July to the first of January, make monthly returns to the auditor of public accounts. His other duties and compensations shall be prescribed by law.

Mr. Van Winkle. I move that in this and like cases where propositions are offered to be printed they immediately go upon the table for that purpose without motion.

The motion was agreed to.

Mr. Lamb, from the Committee on the Legislative Department, submitted the following report:

The Committee on the Legislative Department have been instructed by the Convention to report "a proper mode of apportioning representation in the House of Representatives of the United States."

The Constitution of the United States provides (Art. 1, Sec. 2, Clause 3.) that "representation and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

As the representation is apportioned to the State according to these rules, it is proper that it should be apportioned according to the same rules among the several Congressional districts.

The existing Constitution of Virginia has, therefore, provided, (Art. 4, Secs. 13 and 14) as follows:

Sec. 13. The whole number of members to which the State may at any time be entitled in the House of Representatives of the United States, shall be apportioned as nearly as may be among the several counties, cities and towns of the State, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

Sec. 14. In the apportionment, the State shall be divided into districts corresponding in number with the representatives to which it may be entitled in the House of Representatives of the Congress of the United States, which shall be formed respectively of contiguous counties, cities, and towns be compact, and including as nearly as may be, an equal number of the population, upon which is based representation in the House of Representatives of the United States.

The committee recommend that these provisions be inserted in the Constitution for the State of Kanawha.

The Committee on the Legislative Department have also been required to report an apportionment of representation in the House of Representatives of the United States, under the census of 1860. There is difficulty attending this branch of our duty.

1. It is impossible to arrange the Congressional districts until the boundaries of the State are determined. The representative number of the whole State of Virginia is 1,399,670. According to the apportionment made under the census of 1860, by the Secretary of the Interior, she is entitled to eleven representatives in the House of Representatives of the United States. This is one representative for every 127,242 of her representative number. The representative number for the thirty-nine counties included in the proposed new State, by the first section of the ordinance of August 20, 1861, is 277,933, entitling those counties to two representatives, and leaving an unrepresented fraction of 23,449, or less than one-fifth of the number which would entitle those counties to an additional representative. If to these thirty-nine we add Hampshire and Hardy, we obtain a representative number of 300,796, but still the forty-one counties would be entitled to but two representatives, leaving unrepresented a fraction of 46,312 or about one-third of the number which would entitle them to an additional representative.

The number of representatives will, therefore, in either case be two; but the Congressional districts into which the proposed new State should be divided, will be very differently arranged if the new State be confined to thirty-nine counties from what they would if it include the forty-one.

The ordinance of August 20th, 1861, under which this Convention has assembled, proposes to form a new State out of the territory described in the 1st Section, which includes only the thirty-nine counties referred to. But the Third Section of the ordinance provides that—

"3. The Convention herein provided for may change the boundaries described in the First Section of this ordinance, so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries or to the counties named in this section, if the said counties, to be added, or either of them, by a majority of the votes given, shall elect delegates to the said Convention, at elections to be held at the time and in the manner herein provided for."

It will be observed that the expression here used is that the Convention may change the boundaries described in the First Section, so as to include the counties of Hampshire, Hardy, &c., in the proposed State; but this is only to be done, if the county to be added, by a majority of the votes given, shall declare its wish to form a part of the proposed State, and shall elect delegates to the said Convention, at elections to be held at the time and in the manner provided for in the ordinance.

The counties of Hampshire and Hardy have elected delegates to this Convention. Have they declared their wish to form a part of the proposed State, according to the intents and spirit of the ordinance? This is a fact to be ascertained and declared by this Convention. If they have done so, then the Convention *may* change the boundaries so as to include them.

From the returns made to the Secretary of the Commonwealth, it appears that polls were opened on the fourth Thursday of October last, on the question of the formation of a new State as proposed by the ordinance of August 20th, 1861, at two election precincts in Hampshire and two election precincts in Hardy;—the results being as follows:

Hampshire county, Piedmont, for the new State	16
Hampshire county, Piedmont, against the new State	1
New Creek, for the new State	179
New Creek, against the new State	17
Hardy county, Mrs. Kitsmiller's, for the new State	25
Hardy county, against the new State	0
Greenland, for the new State	125
Greenland, against the new State	0

At the Presidential election held in November, 1860, Hampshire county gave an aggregate vote of 2,008; and Hardy of 1,323. The whole vote of the two counties on the question of the formation of the new State being 363, is about one-ninth of the number of votes (3,331) which they gave at the Presidential election.

Shall this vote be considered such an indication of the wish of said counties to form part of the proposed State, as the ordinance of August 20, 1861, contemplated?

Though we report the facts as they appear to us, the committee would be distinctly understood as not undertaking to indicate what the decision of the Convention should be upon this question. But its decision, one way or the other, by the Convention is a necessary preliminary, not only in reference to the arrangement of Congressional districts, but also to the apportionment of members of the house of delegates, and the arrangement of senatorial and judicial districts.

With a view then merely to bring the question distinctly before the Convention for its decision, we respectfully report the following resolution:

RESOLVED, That a committee of nine be appointed to ascertain and report to the Convention a proper boundary for the proposed new State.

2. It is proper, however, for the committee to add, that there are, in their opinion, other objections in the way of an apportionment by this Convention of the representation which may be allowed the new State in the House of Representatives of the United States.

When the proposed State shall be admitted into the Union, the number of Representatives to which she will be entitled will be declared in the act or resolution of Congress, providing for her admission. It would seem to be premature to establish Congressional districts, before the number of representatives is declared by the proper authority. The term of the 38th Congress, will commence on the 4th day of March, 1863. The territory included in the new State is now represented in Congress; and before the term of the present members of the House of Representatives expires, proper arrangements can be made by the legislature of Kanawha to have the State represented in the 38th Congress.

The Constitution of the United States provides (Art. 1, Sec. 4, first clause), that the time, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

When the new State shall be admitted into the Union, its legislature will undoubtedly have authority, subject to such regulations as Congress may have prescribed, to establish the Congressional districts. In view of the clause just cited from the Constitution of the United States, it is doubtful at least whether this authority must not be exercised by the legislature, and not by the Convention.

The committee recommend the passage of the following resolution:

RESOLVED, That the Committee on the Legislative Department be discharged from the further consideration of the subject of apportioning the representation in Congress under the census of 1860.

By order of the committee.

D. LAMB, Chairman.

The report was laid on the table and ordered to be printed.

MR. LAMB. I move the adoption of the second resolution, for the appointment of a committee to ascertain and report proper boundaries for the proposed new State. The Convention will observe that the apportionment of that committee does not conclude the question one way or the other, but simply that we may have speedy action on the subject; which is absolutely necessary to enable us to act in regard to the questions of apportionment that have been referred to the Committee on the Legislative Department. Until that action is had the questions of apportionment in reference to the senatorial districts, judicial districts, and, in fact, in reference to the house of delegates also, are necessarily postponed for the reason the apportionments must be very different if the boundaries include certain counties from what they would be if they include other counties. I suppose there will be no objection to raising the committee on the subject; and I hope that committee will act as speedily as possible and let us have at least that matter settled.

MR. VAN WINKLE. I concur entirely with the gentleman that this question of boundaries is of the utmost importance. The question what shall be the boundaries of the new State is one that affects almost everything in relation to it. The question whether the original boundaries prescribed by the ordinance are proper; the question whether certain counties lying contiguous should not come in, in order to make a better boundary; the question whether many of these counties have not a disposition to be in, although not directly heard from; these and many other questions will have to be considered and determined in some way. As the gentleman has of course very correctly stated, no apportionment, either of senators, judges, or delegates can be properly made until that question is determined. If after the apportionment is made, any other counties are desirous of coming in, why that will have to be changed to accommodate them. I will, therefore, concur entirely in his recommendation that a committee be raised at once on this subject, and be requested to give all diligent attention to the question.

I wish to say in relation to the other resolution that the Committee on Business in assigning business to the different committees made the apportionment of representation in Congress one of the duties of the Legislative Committee. They did not advert to the fact that the party to make that apportionment is prescribed by the Constitution of the United States. It is the legislature of the State, and of course, of the State of Kanawha when it is constitued, not before.

The resolution to raise the boundary committee was adopted.

MR. HAGAR offered the following:

WHEREAS, Negro slavery is the origin and foundation of our national troubles, and the cause of the terrible rebellion in our midst, that is seeking to overthrow our government; and whereas slavery is incompatible with the Word of God, and detrimental to the interests of a free people, as well as a wrong to the slaves themselves,

RESOLVED, That the Convention inquire into the expediency of making the proposed new State a *free* state, and that a provision be inserted in the Constitution for the gradual emancipation of all the slaves within the proposed boundary of the new State, to be submitted to the people for their approval or rejection.

MR. LAMB. I move the adoption of the second resolution reported by the Committee on the Legislative Department, discharging the committee from the further consideration of the present apportionment of members of Congress, under the census of 1860.

MR. BROWN of Kanawha. It seems to me the Convention should not hesitate at all to discharge that committee as I think it is very manifest that in accordance with the Constitution of the United States that question devolves on the legislature of he State and not on the Convention; that there is nothing now before this body properly on that subject.

MR. LAMB. The Convention, of course, will note the effect of the motion. The first two clauses reported by the committee fix the principle of the apportionment, to be subject to action hereafter. This motion is simply to discharge the committee from making the actual apportionment under the census of 1860. We were required to make such an apportionment and report it to the Convention; though it seems to be generally conceded now that under the operation of the Constitution of the United States it is not for us to make that apportionment, but for the legislature.

The resolution was adopted.

MR. **BROWN** of Kanawha offered the following:

RESOLVED, That the State of Kanawha ought to assume a just and equitable proportion of the state debt of Virginia; and in doing so, to discriminate between its friends and foes, by first paying the bonds now held *bona fide* by her own loyal citizens; next the bonds held *bona fide* by other loyal citizens of the U. S., not resident in the State of Kanawha, and the excess, if any, to the other bond holders, *pro rata*.

MR. **DILLE**, the following:

JUDICIARY DEPARTMENT

1st. The judiciary power of this State, both as to matters of law and equity, shall be vested in *one* Supreme Court of Appeals, and circuit courts. The jurisdiction of these courts respectively, and the judges thereof, except so far as the same is conferred by this Constitution, shall be regulated by law.

2nd. The State shall be divided into eight judicial circuits and three districts, until otherwise regulated by law.

3rd. The counties of   shall constitute the first circuit, etc., etc.

4th. The first and second circuits shall constitute the first district, etc., etc.

The general assembly may, at the end of five years after the adoption of this Constitution, and thereafter at intervals of ten years, re-arrange the said circuits and districts, and increase or diminish the number of circuits; but there shall not be less than two in any one district, and the number of districts shall not be increased or diminished.

CIRCUIT COURTS

For each circuit, a judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by this Constitution. He shall, at the time of his election, be at least 40 years of age, and during his continuance in office, shall reside in the circuit of which he is judge; but judges of the circuit court shall not be eligible to the same office for the next succeeding term.

A circuit court shall be held at least four times a year, by the judge of each circuit, in every county, wherein a circuit court is now or may hereafter be established. But the judges in adjoining circuits, may be required or authorized by law to hold a court in any other circuit.

COURT OF APPEALS

For each district, a judge shall be elected by the voters thereof, who shall hold his office for twelve years, unless sooner removed in the manner prescribed by this Constitution. He shall, at the time of his election, be at least 45 years of age, and during his continuance in office, reside in the district for which he is elected.

The Supreme Court of Appeals shall consist of three judges so elected, any two of whom may hold a court, and shall have appellate jurisdiction only, which shall be co-extensive with the limits of the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law.

When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, the reasons therefor shall be stated in writing, and preserved with the records of the case.

Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office. The salary of a judge of the Supreme Court of Appeals, shall not exceed two thousand dollars, and that of a judge of a circuit court, fifteen hundred dollars per annum, and each shall receive a reasonable allowance for necessary travel, to be prescribed by law.

No judge, during his term of service, shall hold any other office, appointment, or public trust, and the acceptance thereof, shall vacate his judicial office; nor shall he, during such term, be eligible to any political office.

No election of judge shall be held within sixty days of the time of holding any election of electors of President and Vice-President of the U. S., of members of Congress or of the legislature.

Judges may be removed from office by the concurrent vote of both houses of the legislature; but a majority of all the members elected to each house, must concur in such vote, and the cause or causes of removal shall be entered on the journal of each house. The judge against whom the legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least thirty days before the day on which either house of the legislature shall act thereupon.

The officers of the Supreme Court of Appeals, *shall* be appointed by the court, or by the judges thereof, in vacation. Their duties, compensation and term of office, shall be prescribed by law.

The voters of each county in which a circuit court is held, shall elect a clerk of such court, whose term of office shall be six years. The attorney for the Commonwealth, elected for the county, shall be the attorney for the Commonwealth for the circuit court. The duties and compensation of these officers, and the mode of removing them from office, shall be prescribed by law.

When a vacancy shall occur in the office of clerk of any court, such court may appoint a clerk *pro tempore,* who shall discharge the duties of the office until the vacancy is filled.

Judges, and all other officers, whether elected or appointed, shall continue to discharge the duties of their respective offices, after their term of service has expired, until their successors are qualified.

A competent number of justices of the peace, shall be elected by the qualified voters of each district in the several counties, and shall continue in office four years, if they shall so long behave well, whose powers and duties shall, from time to time, be regulated and defined by law.

J. A. DILLE.

MR. STEVENSON of Wood, the following:

ARTICLE ....

Section 1. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for, but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed three hundred thousand dollars, and the money arising from the creation of such debts, shall be applied to the purposes for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Sec. 2. In addition to the above limited power, the State may contract debts to repel invasion, suppress insurrection, defend the State in war, or to redeem the present outstanding indebtedness of the State, but money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Sec. 3. Except the debts above specified in sections one and two of this article, no debts whatever shall be created by or on behalf of the State.

Sec. 4. The credit of the Commonwealth shall not, in any manner or event, be pledged or loaned to any individual, company, corporation or association, nor shall the Commonwealth hereafter become a joint owner or stockholder in any company, association, or corporation.

MR. O'BRIEN, the following:

RESOLVED, That no pauper, insane person, or any one that has been found guilty of an infamous crime, or any one that may be drunk when he offers to vote for any candidate to fill an office in either the legislative, executive or judicial departments of this

Commonwealth, shall be entitled to exercise the rights of suffrage during such limited or final inability.

MR. HARRISON, the following:

BILL OF RIGHTS

RESOLVED, That a Declaration of Rights shall be prefixed to, and be a part of the Constitution to be framed by this Convention; that said Bill of Rights be the same as that prefixed to the Constitution of this state, omitting the 14th declaration.

MR. POWELL, the following:

RESOLVED, That taxation shall be equal and uniform throughout the Commonwealth; and all property shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law.

MR. HERVEY, the following:

RESOLVED, That "Kanawha," in the eighth line of "An Ordinance to provide for the formation of a new State out of a portion of the territory" of the State of Virginia, passed August 20, 1861, be stricken out, and "New Virginia," inserted in its place.

MR. STEVENSON of Wood. The legislature, sir, meets on Monday, and I am informed by the sergeant-at-arms that the desks occupied here now belong to members of that body; and when they are removed the members will have neither tables nor desks except this one (the reporters') to write on. The same officer informs me that he can obtain small tables some twenty inches or two feet square on the top for $2 apiece and that he can obtain desks of this style for $2.50 apiece. It is very important, sir,—I believe absolutely necessary—to have something to write on; and to bring the matter before the Convention I move, that the sergeant-at-arms be authorized to contract for one desk for each member of the Convention of this kind, at a price not exceeding $2.50 apiece. I will say in connection with that, that he says he can have them furnished for the Convention by Wednesday or Thursday.

MR. VAN WINKLE. Cannot they be hired?

The sergeant-at-arms said he had not been able to find any that could be.

MR. WILLEY. I would ask my friend from Wood (Mr. Stevenson) if we get a desk for every member, where are we going to put them? Certainly not in this hall. It seems to me in looking over it, there is small room to get in with our chairs, let alone a chair and desk. We can get as many desks as we can find room for. It seems to me a few common sized pine tables would be better than desks. Certainly we cannot have forty or fifty desks and have any room.

MR. LAMB. What I was going to suggest was that a dozen desks would certainly be sufficient. Any member sitting at a desk will of course cheerfully give it up to another who has any writing to do. We can accommodate each other in that way. A desk for each member certainly could not be got inside of this hall, and if they could it would be an unnecessary number. I would suggest that the sergeant-at-arms be authorized to procure twelve desks which I think would be an abundance.

MR. VAN WINKLE. There is another consideration, sir, connected with this matter, which has caused me some reflection in reference to other matters. This is a Convention sitting at the expense of the State of Virginia, but for a partial purpose. The convention of June which represented the whole commonwealth authorized this Convention, and consequently authorizes all its necessary expenses. I suppose that follows; but I think, sir, we should be a little careful about what expenses we incur. No appropriation has been made by the legislature to pay one dollar of our expenses yet. I have no doubt that body will appropriate for all necessary expenses. But the question is in my mind whether seeing that this furnishing of these desks is not one that the legislature has not yet incurred for itself—for if I understand it, these desks are private property—whether we would not be going a little too far. I suggest this for the consideration of the Convention; or whether it would not be as well to wait till the legislature assembles on Monday and to get some instructions from them on the subject. So far as I know the time and place, I would consider them necessary; for a good deal of writing has necessarily to be done in the Convention; but action to the extent of the resolution as originally offered I do not think should be taken at this time. The modification of twelve desks comes nearer to, but I am not sure whether that even is not going further than we ought. I throw out these hints for the consideration of other members.

MR. WILLEY. It seems to me, sir, if we had two or three large tables that would cost two or three dollars apiece, in convenient positions in this hall we would accommodate all the members that would want to write at the same time, while the remainder of us would occupy our seats. In that way we shall incur no unnecessary expense and at the same time afford reasonably good accommodations to all the members of this body. I do not want the accommodation to be too great and thereby increase the expenses more than the desks would, perhaps. I concur in the suggestions of the gentleman from Wood (Mr. Van Winkle). At the same time, I think we ought to have reasonable accommodations; and think they would be amply afforded by two or three or four pine tables placed in the hall.

MR. STEVENSON of Wood. In bringing this matter before the Convention my only object was to direct their attention to the necessity of having some provision for this accommodation. As to the mode of providing that I have of course no particular choice of my own. I supposed that when the committees began to report nearly all the members would wish to offer some amendments in writing and I could not see how they possibly could be accommodated unless they had something to write upon. However, I am willing to modify the motion in any way that suits the Convention. In regard to the proposition by the gentleman from Monongalia, it seems to me it would be more difficult to dispose of these large pine tables after the Convention adjourns than either the small tables or desks. Now you can sell those desks or small tables at probably one-half at least of the original cost; but if you have these mammoth tables strewed over the room here, you cannot then make any disposition of them at all that I know of. I think it would be better probably to have either the small tables or the desks. I would prefer the large tables myself, if they could be disposed of or the cost would not be too great.

MR. WILLEY. I do not propose to have mammoth tables, at all.

MR. LAMB. The expenses of this Convention will be not less than two hundred dollars a day. If by having the proper facilities for doing the business we can get through a single day sooner it will be just seven times the cost of twelve desks saved. I doubt very much whether in the matter of economy we should not have all proper facilities for expediting business. I would like to have a desk because I want some place to keep the papers I may find it necessary to bring or keep with me. The twelve desks would cost $30. I think the chance of expediting business a little would render it rather a matter of economy in the end, than of injudicious expenditure, particularly if after the Convention adjourns, we can sell those desks for two dollars apiece. It would reduce the expenditure to about six dollars. That six or even thirty dollars would not amount to much more than the time we have already spent talking about the matter.

THE PRESIDENT. The Chair did not understand the gentleman from Monongalia as making a motion?

MR. WILLEY. Only a suggestion.

MR. STUART of Doddridge. Not for a matter of economy but for a matter of convenience, I am offering an amendment to an amendment to embrace the proposition of the gentleman from Monongalia. I will say a couple or three plain tables, situated where the members can go to them when they want to write. But get these desks, some members would appropriate them to their own use and no one would like to disturb them. But they can go to the tables without interrupting any one. The expense will be nothing, and be much more convenient than the desks, and I offer the amendment.

MR. BROWN of Kanawha. What was the original proposition?

MR. STEVENSON of Wood. To get twelve desks.

MR. BROWN of Kanawha. I confess I rather concur with the remarks of the gentleman last on the floor, that unless you purchase desks for all that would invariably be the case, and we would always feel a delicacy in asking other gentlemen to vacate their seats. But a common table would always leave a vacancy for any one to occupy that might choose. I think however the sergeant-at-arms might be able to hire desks enough to accommodate us all, without going to the expense of purchasing. I prefer the amendment of the gentleman from Doddridge.

MR. CALDWELL. I suggest to my friend from Wood that he change his proposition so as to have a committee raised. Now, sir, I am not satisfied, after the remarks of my friend from Monongalia, that there is room for even one table; and I think, sir, an investigation and examination had better be had through the investigation of a committee whether there is room for twelve desks, or for one, two, three or four tables, and let that committee make a report together with expense attending the furnishing of them here. I suggest that that would be better—to have the action of a committee on the subject.

THE PRESIDENT. The Chair would have doubts as to his right to modify or amend while the proposition of the gentleman from Doddridge is pending.

MR. DILLE. I am heartily in favor of these tables—one, two, three, four or five—how many did you say?

MR. STUART of Doddridge. I think three would do.

MR. WILLEY. Three.

MR. STUART of Doddridge. Let them be placed around here as general tables that any member may be permitted to go to at pleasure. The proposition has this additional advantage, that it leaves the matter open, and any member of the Convention is at liberty to buy a table or desk at his expense; and I am very much in favor of his having that privilege (Merriment).

MR. LAMB. I move as a substitute that the Committee on Printing and Expenditures provide the necessary accommodations to facilitate the business of this Convention, on as economical a scale as possible.

MR. PAXTON. I am sorry I cannot agree with the gentleman who has just taken his seat. The Convention now have the matter before them and I think ought to dispose of it, and not put it on the printing committee. Whether they will have desks or tables is for the Convention to determine, and they would just as well do it now as to put it on the committee—putting on them the responsibility of satisfying gentlemen here who it seems cannot satisfy themselves. I concur entirely in the suggestion to have tables. I think they will afford ample accommodations to all gentlemen who will need to write. I hope the matter will not be referred to the Committee on Printing, and that the Convention will dispose of it.

MR. STEVENSON of Wood. I agree with the gentleman from Ohio in his last remark and hope the Convention will settle the matter at once. It is a small matter; and it is hardly worth while to put it on the shoulders of the committee. I will remark, sir, in addition to that, that I feel myself rather in favor of the amendment for getting tables particularly since my friend from Doddridge said they would be got for nothing (Merriment). That is decidedly cheaper than the others. I will therefore accept his amendment, if it is in order, sir, as a modification of the motion.

MR. STUART of Doddridge. What is the substitute?

THE PRESIDENT. To refer the whole matter to the Committee on Printing.

MR. LAMB. There appears to be no objection to the substitute except from the members of the committee themselves, and I certainly do not see how or to whom it could better be referred than to the gentlemen composing that committee.

The substitute was rejected.

MR. STUART of Doddridge. I will now modify my amendment by making it, two plain pine board tables.

MR. VAN WINKLE. I was only going to express my surprise, sir, that the gentlemen who were in favor of the tables, after hearing the members of the committee express themselves in favor of the tables, did not vote for the motion (Laughter).

The motion as amended by the member from Doddridge was agreed to.

MR. BROWN of Kanawha offered the following proposition:

RESOLVED, That it is unwise and impolitic to introduce the discussion of the slavery question into the deliberations of this Convention.

MR. CALDWELL moved the following and it was adopted:

RESOLVED, That the Secretary of the Commonwealth be requested to furnish the Convention at an early day, with the vote of the several counties for and against the new State, showing also the aggregate vote for and against said State.

MR. HARRISON. I would inquire whether any copies of the Rules have been furnished. I have not seen anything of the kind and do not know how to proceed.

THE PRESIDENT. The rules are printing. The Chair is informed that they are already printed.

MR. HARRISON. I have not had an opportunity to look over them. I am not aware whether it is required that all resolutions shall be handed in to the Secretary in writing or not. I wish to submit a resolution to the proper committee as a suitable article for the Constitution. The whole thing is printed. It is the second article of the Constitution of Virginia, headed "Division of Power."

MR. VAN WINKLE. I believe the committee has already reported on that subject, and the report will be before the Convention for action on Monday.

MR. HERVEY offered the following, which was adopted:

RESOLVED, That the auditor of the state be requested to furnish the Convention with the aggregate amount of the state debt on the first day of June, 1861.

MR. PAXTON. Mr. President, if we have nothing further before us, I move we now adjourn.

The motion was agreed to, and the Convention adjourned.

V. MONDAY, DECEMBER 2, 1861.

Prayer by Rev. R. L. Brooks of the M. E. Church (member from Upshur).

Minutes read and approved.

THE PRESIDENT. The Chair will now report the committee under the resolution of Saturday, on the boundaries of the State. It will consist of the following gentlemen: Messrs. Stuart, Sheets, Dolly, Walker, Simmons, Brown of Kanawha, Willey, Lamb and Van Winkle.

MR. PAXTON. I was going to inquire, sir, whether the report of the Committee on Fundamental and General Provisions is now before the Convention.

MR. VAN WINKLE. It is not.

MR. BROWN of Kanawha offered the following for reference:

GENERAL PROVISIONS

RESOLVED, That private property ought not to be taken for public uses, without just compensation. And the legislature should prescribe by law the proper mode of ascertaining the damage sustained by each individual on the public account.

Mr. Stevenson of Wood from the Committee on Printing and Expenditures, on whom was imposed the duty of ascertaining and reporting the probable cost of reporting and publishing the debates of the Convention, presented the following:

REPORT

of the Committee on Printing and Expenditures, on the subject of reporting and printing the debates of the Convention.

The Committee on Printing and Expenditures having been instructed by the Convention to "inquire and report as to the propriety of employing a proper person or persons to report, officially, the debates of the Convention and the probable expense thereof, and of printing the same in book form," would respectfully report that in their opinion it is desirable that a competent person or persons should be employed to report the debates of the Convention, and also to have the same published in book form, provided the same can be done without unreasonable cost. In order that the Convention may be enabled to judge of the expense of the reporting and publishing, the Committee herewith present two proposals, one from Messrs. Campbell & McDermot for reporting and publishing the debates and proceedings of the Convention, and one from Messrs. Trowbridge & Downey for publishing the same. All of which is respectfully submitted.

W. E. STEVENSON,
Chairman of Committee.

INTELLIGENCER OFFICE

Dec. 2, 1861.

W. E. STEVENSON,

Chairman of Com. on Printing and Expenditures.

SIR:—Below we annex propositions for publishing the debates and proceedings of the Constitutional Convention.

FOR 1000 COPIES—500 PAGES

For reporting, transcribing, proof-reading, etc., including a complete index, at 60 cents per thousand ems	$ 791.40
For composition at 38 cents per thousand ems	521.22
For press work at 40 cents per token	49.60
For paper (36 reams and 3 quires)	181.00
For binding and for pressing sheets	400.00
	$1,923.22
For 500 copies, 500 pages	$1,800.00
For 1000 copies, 250 pages	$1,156.00
For 500 copies, 250 pages	$ 970.62

One-third to be paid on adjournment of Convention and the remainder on delivery of the work.

CAMPBELL & M'DERMOT.

To W. E. STEVENSON, Esq.,

Chairman of Com. on Printing:

We, the undersigned, proprietors of the "Daily Press," hereby agree to do all printing and binding for the Convention on the division of the State on the same terms that we do the State printing, excepting the matter which comes under the head of *plain* *printing,* or *plain composition,* which we agree to do *five per cent,* less than we charge for printing for the State. All of which is respectfully submitted.

TROWBRIDGE & DOWNEY.

Probable cost for one hundred copies of 200 pages each.

Composition	$114.00
Paper	7.00
Press work	10.00
Folding, stitching and binding	25.00
	$156.00

FOR 500 COPIES

Composition	$114.00
Paper	28.00
Press work	40.00
Folding, stitching and binding	125.00
	$307.00
Composition for each additional 100 pages, the cost will be about	$57.00
Additional binding for same	10.00

This is as near as we can estimate, as some of the matter will be in different type. Hence it is impossible to make it exact.

TROWBRIDGE & DOWNEY.

THE PRESIDENT. What disposition does the gentleman from Wood desire to make of the report?

MR. STEVENSON of Wood. I suppose that will be a matter for the Convention. My impression is however that the report and documents had better lie on the table and be made the special order for some time. It may lead to a good deal of discussion to understand the matter properly. If some gentleman will suggest an hour I will move to lay the report and accompanying documents on the table to be printed and made the special order for tomorrow morning.

The motion was agreed to.

MR. VAN WINKLE. As chairman of the only committee making the only report before the Convention for action, I would state that I did not propose myself to call it up this morning. The legislature must meet in this room in the course of half an hour, and it does not seem worth while to go into an important matter like that and leave it in fifteen minutes. A new place, it is true, has been provided for the sitting of the legislature, but their adjournment was to this I believe, and they must meet here in order to adjourn to the new place that is provided for them. I apprehend it would not be worth while to take up that or any other business like that to occupy any considerable time.

MR. RUFFNER. The legislature proposes to meet in another building.

MR. VAN WINKLE. My impression is the legislature cannot legally meet in any other building, having adjourned to meet in the Custom House. They must meet here and may then adjourn to meet in the other building. They were called together to meet "in the Custom House, in the city of Wheeling." They cannot therefore, meet legally in any other place. They can meet here and in five minutes adjourn to the other place; but here is the place of meeting if I understand it. I move therefore that we adjourn, but will withdraw it if any gentleman has anything to offer. I have understood they proposed meeting at 12 o'clock.

MR. PARKER. I have a communication to be referred.

He presented the following:

PUBLIC EDUCATION

WHEREAS, It has now become practically demonstrated, that virtue and general intelligence among the people, including some knowledge of the military art, is the only sure foundation on which Republican governments can rest, therefore

RESOLVED, That it shall be among the first duties of the general assembly, to make the amplest provisions the circumstances of the State will allow, for establishing and maintaining, throughout the State, a system of public free schools, with comfortable school houses, competent teachers and suitable books: the schools to be so located and conducted, as to be as accessible as the country will admit, and open to all free children; and by suitable legislation, insure the attendance of all free children of sufficient length of time at least, to learn to read and write, and the male portion the manual of arms and rudiments of the military art, together with the fundamental principles of our Federal and state governments.

SUPPORT OF PUBLIC SCHOOLS

That just proportion of the literary fund of the State of Virginia which this State shall be entitled to; all property accruing to the State by reason of escheats, fines, penalties, forfeitures and property derelict; all monies accruing to the State from confiscation or sequestration of the property of rebels residing within the boundaries of this State, after paying or indemnifying such loyal citizens of the State, who shall have been damaged by the present rebellion, and not otherwise indemnified; the one-half of the capitation tax to be levied and collected annually, as provided in this Constitution; and all such other monies as the general assembly shall appropriate to the purpose, to be levied on property, with all interest and income arising from the same, shall be applied to the establishment and maintenance of public free schools, to be distributed among the several counties, cities and towns, according to the number of free inhabitants in each.

Mr. Haymond moved the following:

RESOLVED, That the Secretary of this Commonwealth be requested to write to the proper authorities of the States of Ohio and Pennsylvania for copies of their constitutions and laws in relation to free schools for the use of this Convention.

MR. VAN WINKLE. I could state, sir, that the constitutions in another form can be purchased at the bookstores—the constitutions of all the states. It would be some time before they could be got here; besides it would be calling on these states to have official copies made.

MR. LAMB. There is I believe a full digest of the laws of Ohio just below here. I do not know whether there is such a one of Pennsylvania or not. They certainly can be procured some place in town.

MR. STEVENSON of Wood. I presume the only thing necessary to be got in that case would be the school law. I have two volumes of them.

MR. LAMB. The laws of Ohio?

MR. STEVENSON of Wood. There is nothing, in brief, but two very short sections on that subject, of education and I can furnish both of them to the committee. It would be almost impossible to get these things as proposed in time to be of use to the Convention, if we adjourn in the time now contemplated.

MR. SINSEL. I have a report from the board of education of Massachusetts, complete. Any member of the Convention that desires it can have the use of it.

MR. VAN WINKLE. Give it to the committee on that subject.

THE PRESIDENT. Does the gentleman from Marion desire a vote on his proposition?

MR. HAYMOND. Yes, sir.

The resolution was rejected.

MR. STEVENSON of Wood. I have a paper, Mr. President, which I desire to go to the Committee on Education, without reading:

EDUCATION

1. The legislature shall as soon as conveniently may be, provide by law for the establishment of a system of public free schools throughout the State, in such manner as to make education as nearly universal as possible.

2. It shall cause the several cities, counties and towns, to be laid off in districts of convenient size, shall establish free schools therein, and authorize the tax payers and heads of families, to elect directors for the same, whose numbers and duties shall be defined by law.

3. The sources of increase now provided by law, for the augmentation of what is now known as the Literary Fund, shall be continued, and the permanent capital and the revenue arising therefrom, shall be used for the purposes of free school education and for no other object whatever.

4. All lands and other property, which have been, or may hereafter be given, granted or bequeathed to the State, to counties, cities, towns, colleges, academies, schools, school districts, individuals, or communities, for the purposes of education or the promotion of the arts and sciences, and the proceeds thereof shall be consecrated, held invested and applied for the subjects, and in accordance with such gifts, grants or bequests, and for no other purpose.

MR. POWELL offered the following:

WHEREAS, When the legislatures of some of the States have made laws restraining or forbidding the sale of intoxicating liquors, the courts have decided that such legislation was unconstitutional.

THEREFORE, RESOLVED, That the Committee on the Legislation Department be requested to take into consideration the propriety of inserting the following, or some similar provision in the Constitution:

The legislature may make laws regulating or prohibiting the sale of intoxicating liquors within the limits of this Commonwealth, or in any of the counties thereof, or in any corporation within the State, when such legislation is demanded by the citizens thereof; and the legislature may submit such laws to the people of the State, county or corporation, as the case may be, for their ratification or rejection, at the ballot box.

MR. HARRISON, the following:

RESOLVED, That the duties of every office shall be discharged by the holder thereof in person.

MR. PARSONS, the following:

RESOLVED, That the Committee on Education inquire into the expediency of the banks of this State contributing from their net dividends, at least one-half of one per cent, for the purposes of education.

RESOLVED, That the Committee on Education inquire into the expediency of setting apart for the purposes of education all fines and recoveries for the use of the State, on recognizances or otherwise.

MR. BROWN of Preston, the following:

Taxation shall be equal and uniform throughout the Commonwealth, and the mode of levying taxes shall be by valuation; so that every person shall pay a tax in proportion to the value of the property he owns or has in his possession. Such value shall be ascertained in such manner as shall be prescribed by law.

MR. SINSEL, the following:

1. The legislature shall provide for a system of free schools throughout the Commonwealth. It shall cause each county and city, to be divided into convenient school districts, and cause a school house to be built in each, of suitable dimensions.

2. There shall be a board of education, which shall consist of the governor and secretary of the Commonwealth, and four persons appointed by them, each to hold office for the term of four years from the time of their appointment, one retiring each year in the order of appointment; and the governor and secretary shall fill all vacancies in the board which may occur from death, resignation, or otherwise. The board may appoint its own secretary.

3. The board may take and hold to it and its successors, in trust for the Commonwealth, any grant or devise of lands, any donation or bequest of money or other personal property, made to it for educational purposes; all fines and forfeitures; all of the waste and unappropriated lands within the Commonwealth, and all of the revenue arising from the capitation tax; and shall forthwith pay over to the treasurer of Commonwealth, for safe keeping and investment, all money and other personal property so received. The treasurer shall from time to time invest all such money in the name of the Commonwealth, and shall pay to the board on the warrant of the governor, the income or principal thereof, as it shall from time to time require; but no disposition shall be made of any devise, donation or bequest, inconsistent with the conditions or terms thereof.

MR. VAN WINKLE. If there are no more of these papers to be offered, I would suggest that the Committee on Boundary has not yet been able to come to a conclusion on that subject, and it seems to be governed by the action of other committees. Other committees are sitting and have appointed meetings this afternoon, but the legislature is about to meet and several members are members of that body and would like to be present on the first day. I was therefore about to move that the Convention should adjourn instead of taking a recess until two o'clock; because I apprehend the business will be better forwarded by giving the committees an opportunity to be at work, than by sitting here without anything before us. There will be a slim attendance here anyhow, as most of the members will desire to be in the legislature to hear the governor's message read. I therefore make that motion.

The motion was agreed to and the Convention adjourned.

VI. TUESDAY, DECEMBER 3, 1861.

Prayer by Rev. J. L. Clark, of the M. E. Church.

Minutes read and approved.

MR. STUART of Doddridge. The Committee on Boundary wish to report this morning, sir; and in view of the fact, Mr. President, that several committees which have been raised by this body will predicate the basis of their reports on the action of the Convention upon this report, I move that it be laid on the table and printed, and made the order of the day for tomorrow at eleven o'clock.

MR. VAN WINKLE. It may be read I suppose.

The Secretary read it as follows:

The committee appointed to "ascertain and report to the Convention a proper boundary for the new State," respectfully submitted the subjoined resolutions. They append to this report tables A, B, C and D, showing the white, free colored, slave and total population, and the federal numbers of the counties comprised in each of the districts mentioned in the resolutions.

By order of the committee.

C. J. STUART, Chairman.

RESOLUTIONS

RESOLVED, That in addition to the thirty-nine counties, mentioned at the close of the first section of the ordinance convening this Convention, the counties of Pocahontas, Greenbrier, Monroe, Mercer, McDowell, Buchanan and Wise, be included within the boundaries of the proposed new State.

RESOLVED, That the district comprising the counties of Craig, Giles, Bland, Tazewell, Russell, Lee and Scott, shall be included in and constitute part of the proposed new State, provided a majority of the votes cast within the said district, at elections to be held for the purpose, on the third Thursday in April, in the year 1862, and a majority of the said counties are in favor, of the adoption of the Constitution to be submitted by this Convention.

RESOLVED, That the district comprising the counties of Jefferson, Berkeley, Morgan, Hampshire, Hardy, Pendleton, Highland, Bath and Allegheny shall also be included in, and constitute part of, the proposed new State, provided a majority of the votes cast within the said district, at elections to be held for the purpose, on the third Thursday in April, in the year 1862, and a majority of the said counties are in favor of the adoption of the Constitution to be submitted by this Convention.

RESOLVED, That the district comprising the counties of Clark, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge and Botetourt shall also be included in, and constitute part of, the proposed new State, provided a majority of the votes cast within the said district, at elections to be held for the purpose, on the third Thursday in April, in the year 1862, and a majority of the said counties are in favor of the adoption of the Constitution to be submitted by this Convention.

RESOLVED, That this Convention respectfully request the general assembly to make suitable provisions for holding the elections mentioned in the preceding resolutions.

TABLE A.

Counties	White Pop'n	Free Col'd	Slaves	Total Pop'n	Federal Nos.
Pocahontas	3,686	20	252	3,958	3,857
Greenbrier	10,499	186	1,525	12,210	11,600
Monroe	9,526	117	1,114	10,757	10,311
Mercer	6,428	28	362	6,818	6,673
McDowell	1,535	0	0	1,535	1,535
Buchanan	2,762	1	30	2,793	2,780
Wise	4,416	26	66	4,508	4,481
Totals	38,852	378	3,349	42,579	41,237

TABLE B.

Counties	White Pop'n	Free Col'd	Slaves	Total Pop'n	Federal Nos.
Craig	3,106	27	420	3,553	3,385
Giles	6,051	54	778	6,883	6,571
Bland					
Tazewell	8,627	91	1,202	9,920	9,439
Russell	9,030	51	1,099	10,180	9,740
Lee	10,195	13	824	11,032	10,702
Scott	11,530	52	490	12,072	11,876
Totals	48,539	288	4,813	53,640	51,713

NOTE: The county of Bland was formed from Tazewell and Giles, since the census of 1860 was taken.

TABLE C.

Counties	White Pop'n	Free Col'd	Slaves	Total Pop'n	Federal Nos.
Jefferson	10,092	523	3,960	14,575	12,991
Berkeley	10,606	269	1,650	12,525	11,865
Morgan	3,613	24	94	3,731	3,693
Hampshire	12,481	219	1,213	13,913	13,427
Hardy	8,521	270	1,073	9,864	9,434
Frederick	13,082	1,206	2,259	16,547	15,643
Pendleton	5,873	48	244	6,165	6,067
Highland	3,890	27	402	4,319	4,158
Bath	2,652	78	946	3,676	3,297
Allegheny	5,643	132	990	6,765	6,369
Totals	76,453	2,796	12,831	92,080	86,944

TABLE D.

Counties	White Pop'n	Free Col'd	Slaves	Total Pop'n	Federal Nos.
Shenandoah	12,829	314	753	13,896	13,594
Warren	4,586	281	1,575	6,442	5,812
Clarke	3,707	64	3,375	7,146	5,796
Page	6,875	384	850	8,109	7,769
Rockingham	20,495	526	2,387	23,408	22,453
Augusta	21,557	576	5,617	27,750	25,503
Rockbridge	12,845	421	3,984	17,250	15,656
Botetourt	8,444	303	2,769	11,516	10,408
Totals	91,338	2,869	21,310	115,517	106,991

RECAPITULATION

Districts	White Pop'n	Free Col'd	Slaves	Total Pop'n	Federal Nos.
39 Counties	272,759	1,038	6,894	280,691	277,933
Table A	38,852	378	3,349	42,579	41,237
Table B	48,539	288	4,813	53,640	51,713
Table C	76,453	2,796	12,831	92,080	86,944
Table D	91,338	2,869	21,310	115,517	106,991
Totals	527,941	7,369	49,197	584,507	564,827

The motion of the chairman was agreed to.

Mr. Soper presented the following:

RESOLVED, That it be referred to the Committee on County Organization to inquire into the expediency of reporting the following provisions:

1. The counties of this State shall be divided by law into townships, with an area of not less than thirty-six square miles, and until such division shall be made, the districts into which the counties are now divided shall be the townships thereof.

2. The voters of each county at the annual election therein, shall elect a sheriff, county clerk, treasurer, prosecuting attorney, county surveyor, and two coroners, once in every three years, and as often as vacancies shall happen, to fill such vacancy. Sheriffs shall be ineligible to the same office for the next three years after the expiration of their offices. The persons so elected shall be residents of the county, except the prosecuting attorney—and the respective duties and compensation shall be prescribed by law.

3. The voters in each township at the annual town meeting therein shall elect a supervisor, town clerk, overseer of the poor, two assessors, two commissioners of highways, two constables, a collector, and such other officers as the legislature may direct. The officers so chosen shall be residents of the township, and hold their offices for one year. The time and manner of such election, their duties and pay shall be fixed by law.

4. The supervisors shall together form a county board of supervisors; they shall appoint a clerk; audit and direct the payment of all demands against the county and townships; authorize and direct the payment and collection of all unpaid levies and taxes for state, county and township purposes, and shall execute such local powers and perform such other duties as may be prescribed by law.

5. Vacancies in county officers may be filled by appointment from the governor, and vacancies in township officers shall be filled by the supervisors. The person by virtue of such appointment shall hold his office, until the end of the political year in which such vacancy may happen.

6. All fines and penalties imposed within a county, for misdemeanors, and other offenses of less degree than felony, when collected shall be paid to the county treasurer, to be applied in payment of the demands audited by the board of supervisors against the county.

MR. CARSKADON, the following:

WHEREAS, There seems to be a difficulty in fixing the boundaries of the new State, there being a number of counties contiguous to the proposed boundary, known to be loyal, and supposed to be in favor of going into said State;

RESOLVED, That this Convention frame a Constitution, which shall be laid before the people for their consideration, and this Convention adjourn over till some time in May, (the time to be fixed by the Convention) when the people within the proposed boundaries of the new State, and such other counties as lie contiguous, may vote the rejection or ratification of the Constitution, and also whether they (the contiguous counties) wish to be included in said State.

MR. STEVENSON of Wood. The morning hours was set aside for a special order, the matter of publishing the debates of the Convention.

MR. HAYMOND presented the following:

There shall be a general free school system established throughout this Commonwealth. And for the purpose of creating a standing school fund, all property confiscated in this State, belonging to all persons who may be found aiding the rebellion now existing, or which may hereafter exist, shall first be applied to the payment of such creditors as may be provided for by law, the balance shall be paid in to the literary fund of the State.

And to further aid in the establishing said school, the governor of the Commonwealth shall cause to be sold all the stock held by the State in the banks, at or near its par value, and the stock held in internal improvements shall be sold at whatever price it will bring in market, and the proceeds of said stocks shall be paid, also, into the literary fund of the State. This, together with the amount paid in from the proceeds of confiscated property, shall constitute a standing fund to be managed as may be directed by law, in establishing and maintaining one grand general free school throughout the State.

MR. TRAINER, the following:

RESOLVED, That the Committee on Legislation inquire into the expediency of fixing in the Constitution a prohibition against granting license for the sale of spirituous liquors; thereby taking from the traffic its legal character.

THE PRESIDENT. The order of the day is called for. Has the gentleman from Wood a motion to make?

MR. STEVENSON of Wood. I have no motion to make. The report and proposals are before the Convention and the committee would prefer that the Convention would decide on that matter as they think best. They are before the Convention now I suppose without motion.

THE PRESIDENT. The Chair thinks it would take a vote to bring them up.

MR. VAN WINKLE. In order to bring the matter before the house, sir, as this report was made on a motion of mine, and that there may be something tangible here, I move that the Committee on Printing and Expenditures be authorized to contract for the reporting and printing of the debates of the Convention.

It is a matter in which the Convention must judge for itself. My object in first making the motion was at the suggestion of others that it was usual in bodies of this kind to have their debates reported in a form for preservation. If this be the case it is important that these debates should be reported by one who becomes an officer of the Convention, and who is therefore bound to exercise due care that the debates be correctly reported. If they are to be reported at all, I say, in a form for preservation—if it is the desire of this Convention that the first act, as it may be called, of the new State should be preserved, then it is important that it should be reported correctly, and that there should be a direct responsibility to the Convention by the parties reporting and printing them. The newspapers report daily what occurs here, but they are entirely without responsibility. It is their own enterprise; they do it at their own expense, for the purpose of giving it to their readers. It is necessarily done hurriedly, and mistakes and errors will occur.

The proposition that has been handed in to the committee is in the alternative: For one thousand copies of five hundred pages $1,923.22; for five hundred copies same number of pages, $1,800; for a thousand copies of two hundred and fifty pages, $1,156; for five hundred copies of five hundred pages, $971.62; varying in expense for the different styles from the sum of $971.62 to $1,923.22. I apprehend, sir, that a medium quantity would perhaps cover all that this Convention is likely to need. Perhaps the smallest number of pages would include it all, though it may be considerably more. This applies I understand to debates on the reports of committees, for instance, not to the chance conversations that are occurring here constantly, on little motions that spring up on ordinary proceedings, but discussions on the regular debates, as, for instance when a report is offered and members express their voices and those of their constituents in reference to the important principles involved.

It is certainly desirable that what is said here, the information that is elicited on the investigation these subjects receive, should be perpetuated in some way. They are important, so much so that, sir, in the Constitutional Convention of 1850, there was a corps of reporters, that was independent of printing. Those debates were reported with remarkable accuracy, but owing to the insolvency of the printer, they are not extant.

I submit these views, without indicating a very strong wish that this thing should be done, though I think it would be creditable and that it should be; and I think hereafter every member would turn back with pleasure to what had occurred here; at least I would; for I hope that our meeting, our intercourse, and our parting will be in such a spirit and the results of our labors will be such, that we will always look back with gratification to what we have done here. I should like to hear the opinions of other gentlemen on this subject.

I apprehend, sir, in reference to incurring the expense, that this is perfectly within our power. It is one of those things usual in all such bodies. It is a thing that will commend itself to everybody as almost necessary and highly proper. I apprehend that the state convention which met here in August, in authorizing this Convention certainly authorized it to incur any expense that is usual and proper for such bodies. I think, therefore, the only question that remains in reference to the expenditure, is whether the object to be attained is worth the proposed cost—whether if we were acting for the State of Virginia—whether if we were her representatives in the legislature, for instance, considering this subject, we would think the good that is to be attained by preserving these debates would compensate for the necessary expense.

I will state that I have compared the rates proposed here with those paid for printing in Richmond, in 1850, and find that they are far below what is there charged. I do not know what the difference of the relative prices of printing in Richmond and printing in Wheeling ought to be; but the committee no doubt would satisfy themselves in reference to this that the charge is a proper one, but not excessive.

MR. POMEROY. I will not consume the time of the Convention with any extended remarks but may say at the outset that I fully concur with the gentleman from Wood, who has just taken his seat. I hope we will look back with a great deal of pleasure on the results of our deliberations here. There appears to be a feeling among members, as far as I can ascertain, that during our deliberations here, with the lights we have, that we might make a constitution, I think we may say without boasting, a little better than any that exists in any of the other states, and as a matter of interest, to call up the interesting subjects that will be under discussion, by referring to this book in after days, I have no doubt we will take pleasure in so doing, and that others will take pleasure in reading in a correct form what has occurred here. As has been very truthfully remarked although the reports in the daily papers appear so full, yet they are not responsible. It is an enterprise of their own, for their own benefit, and one that we all rejoice in. But we want it in a form that it can be preserved; and all that I am about to say now in this connection is that I have full confidence from my acquaintance with the committee, that they will do what is right and make such a contract as will be satisfactory to the members of the Convention, and that it is safe to repose confidence in the members of this committee, and that they will contract with whatever person will do it in the best way; and in this way we will preserve the doings of this Convention that they may be handed down to posterity. I think the committee is better prepared to make a contract than the Convention. As such will be themselves; and I am entirely willing to trust this whole matter to the committee. I am in favor of the debates being preserved and published in book form. I believe we have full power. Other conventions here and elsewhere legislated in regard to expense, and we have the same power; and while we ought to be very careful to avoid unnecessary expense, this is not an item that I deem unnecessary, but one of great advantage.

The motion was agreed to.

MR. VAN WINKLE. If there is nothing else, sir, I will ask that the first report of the Committee on Fundamental and General Provisions be taken up and considered.

The motion was agreed to.

MR. VAN WINKLE. According to one of the resolutions passed at the instance of the Committee on Business, "Every report made by a standing committee shall, in its turn, be considered, and be open to amendment, section by section, but the vote on the passage of any section or clause shall not be final. The question shall recur on the passage or adoption of the whole report as amended, and motions to strike out and to insert shall be in order." This, sir, fixes the order of proceeding upon this and all subsequent reports that may be brought in by the standing committees. It must be taken up section by section, amended as we go along, until it is in a position to satisfy its friends or opponents, and then the vote will recur on the whole, and it will be still open to amendment by insertion or striking out. Will the clerk read the first section?

It was read as follows:

Section 1. The State of Kanawha shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

MR. SINSEL. Mr. President, in the first section I move to strike out the word "Kanawha."

MR. POWELL. I second that.

MR. VAN WINKLE. I should like, sir, to hear some reason assigned if there is any, why this name is not a good one.

MR. SINSEL. Mr. President, one reason I have for striking it out is that I am a Virginian; I was born and raised in Virginia, and I have ever been proud of the name. I admit that Virginians have done wrong—that many of them in this rebellion have disgraced themselves; but that has not weaned me from the name. When we look back to history and see the origin of the name—Virginia, from the Virgin Queen—the queen who swayed the scepter of England with so much glory and renown—we might almost go back a little further to Virginia, the Virgin. It always makes me think of the Virgin Mary, the mother of our blessed Redeemer. It is a name that I almost revere; and I am utterly opposed to leaving it out and substituting the name "Kanawha" in its stead.

MR. PARKER. It strikes me that there are other reasons than those offered by the gentleman from Taylor. There is within the boundary of the new State a large county of the same name as the one proposed for the State—the county of Kanawha, which has been one of the most prominent points within the boundaries of the new State. In looking over the United States, I believe we can find no instance where any subdivision of a state bears the name of the state itself. I believe—I have referred somewhat to the gazetteers, and from my recollection this is the case. Take it in the State of Ohio. We find no county, no town, no subdivision within that state bearing the name of the state itself. The State of Kentucky, the State of Massachusetts, the State of California, or any other state. Well now, this means something and it seems to me I discern the reason why it is so scrupulously guarded that to no subdivision whatever is there given the name that the state itself bears. Well, I suppose the reason is that it shall not create confusion, in postal and other connections with other parts of the country, and the outside world. And it seems to me that so prominent a county, known so well as Kanawha—the county of Kanawha is the prominent point in our new State. Now, we get up the name of the State—we attach to it the name of Kanawha—well, it strikes me we can find some other, more proper name at this time. I go with my friend from Taylor for Virginia. I go—though but the adopted son of Virginia—I go for rescuing her and preserving her. But it seems to me as I stated in the first place, there is danger of confusion where we have a county as prominent in a state of the same name. Now we give the name of the State of Kanawha, to the county of Kanawha, to the post office at Kanawha court house, and it seems to me we shall get into confusion. Therefore I can see no peculiar claim that Kanawha has. There is a very pretty river there of this name—nice river—but there is no particular euphony in the name; or perhaps no claim from historical considerations. I do not know of any.

MR. BROWN of Kanawha. In changing this name it seems to me the Convention ought to inquire as to the propriety of it, and whether there is any better name to be selected. In looking at our power in this matter I understand that we are called here in pursuance of law. I understand that we are not a heterogeneous mass of individuals assembled here to follow the bent and inclinations of ourselves, but assembled here in legal form, under a prescribed law of the State—a law emanating from a convention assembled in pursuance of and with the assent of the legislature as within that law, carried into effect and ratified so far as our action here is concerned, by the free will of the people. That ordinance prescribes definitely the name of the State proposed to be erected; and it becomes a question not whether this or that or any other name shall be the name of the new State but submits the question definitely to the people within the proposed boundaries whether they will form the new State as proposed with the name prescribed. I have understood from gentlemen who were in that Convention that the name itself was a compromise. But whether it were a compromise or not I maintain the people have ratified this question and have determined by our presence here that this new State shall exist and that it shall be called Kanawha.

That there is a very obvious propriety in that name seems to me very clear; because when we see the states of the Union that have been formed throughout the length and breadth of the land, following an almost unbroken line of precedents in naming the states after particular rivers within their territories, and generally selecting the most prominent, it must be considered a strong argument why we should do the same. We see that in the name of the state right across the way here; in our sister State of Kentucky, which was the daughter of Virginia; in the State of Tennessee named after the river of that name,—even changed in the case of Tennessee, for the original name of the territory was Franklin, and they began in the early stages of that territory to form a state of that name, but they afterwards changed it and adopted the name of Tennessee, after one of the principal rivers in the territory. You go into Nebraska—you find a territory there named after the chief river of that territory. We have the same thing in the State of Kansas. Pursue the cases around you, within these Western States, and you find that the chief rivers have been the chosen example for the naming of the states. There is an obvious propriety in it. It shows that the people look at home for names. It has been remarked that there was no instance, I believe, of a state being called after a small part or subdivision of it. The State of Kentucky has been alluded to. If I recollect aright Kentucky was but one of the counties of Virginia. The time was when Kentucky was a part of Virginia territory and when West Augusta covered all this portion of the State of Virginia, and the district of Kentucky covered all that portion of the state which now bears its name, and which through a subdivision of the State of Virginia has been erected into a commonwealth, and now wears the proud name of that subdivision —a name no less proud than that of Virginia whence she sprang.

It has been said by gentlemen that they cherish the name of Virginia, from the source, from the Virgin Queen after whom it was named, but, sir, when this was mentioned, I confess my mind reverted to the fact that that virgin was not above suspicion (laughter) that the history that tells the truth tells of dalliances not to the credit of that virgin, and we need seek no honor or pleasure in the recollection. I only regret that our old mother state has been caught in dalliance from which we are trying to rid ourselves by a division of our territory.

With these views, and this obvious propriety, and this precedent, I feel constrained to vote against the motion which the gentleman has made to strike out after the people have ratified the name of Kanawha.

MR. STUART of Doddridge. I do not like to be squabbling over names here, because I attach very little importance to the name myself individually. But I stand here to represent the views and wishes of my constituents. And when I recur to the fact that this name has been endorsed by the people of the proposed new State, I must be permitted to say that my people voted for the new State with a protest against the name—that there is not a citizen—not one solitary man—living within the boundaries of my county, although one of the most loyal in the State—that is not in favor of changing the name. I must insist that the fact that the people of the proposed new State have voted almost unanimously for it, is no reason why they must be considered as having endorsed the name proposed. I must say, sir, it is just the reverse. Then, sir, I shall vote for striking out "Kanawha", from the fact that I desire to represent the views and wishes of my constituents, and I think if every member is actuated by such motives that there will be no question about striking it out. Now, as to the reasons, Mr. President, that might be assigned why it should be stricken out, I do not deem it very important to assign them; and why the majority of my people appear so much attached to the name they desire to be placed here when "Kanawha" is stricken out, will come up, I presume, when we propose to fill the blank. I hold it is unnecessary to go into those reasons now, as I believe the Convention are prepared to strike out the name of "Kanawha" and I know they are, if they are prepared to consult the wishes of their constituents.

MR. POWELL. I must say that if we represent the wishes of the people of Harrison we will strike out the name of Kanawha. I conversed with a great many persons in that county in regard to the name, and it was the unanimous request that if this Convention had the power, that they change the name. Strike out the name of Kanawha and insert the name of Western Virginia. That was the almost unanimous wish. A large meeting of citizens of Harrison was held at one point, and I was there, and a resolution was passed unanimously that the name of Kanawha be stricken out and Western Virginia inserted. It was ordered that the resolution be handed to one of the delegates. It was not handed to me but to my colleague, it appears. But I do hope that we are prepared to strike out the name of Kanawha. I am sure if we feel a desire to represent the wishes of the people, at least so far as my knowledge extends, we will do so.

MR. TRAINER. Mr. President, I have no particular objections to the word "Kanawha." They have a very beautiful river down there, a very beautiful valley, and I suppose they are very clever people; but I think, sir, we may get a more proper name for this new State than Kanawha. I think that we can find a name that will identify us so that everybody will know who we are and where we are and the material out of which we are made.

And in regard to the wishes of the people, I wish to say that so far as the people of my county are concerned—and I believe I hail from as loyal a county as there is within the boundaries of this new State—that our people generally are opposed to this name. They have nothing particularly against Kanawha, but they do not like the name, and they want something else—something which they conceive would be more proper and would more fully present to the world, our position, place and relations. I shall vote in favor of the motion to strike out the word Kanawha.

MR. MAHON. Mr. President, I would say that so far as I personally would stand in reference to this name, I have no objections that I know of. But, I know the people of our county have great objections to the name. I have had no conversation with any citizens of our county to my knowledge but what had great objections to the name of Kanawha. Would much prefer Western Virginia, or New Virginia, or some other name; and on that account I shall necessarily have to vote for striking out.

MR. LAMB. Mr. President, it is well known by the members of this Convention that I was one of those who was decidedly opposed to entering upon the measure of instituting the new State at the present time. I thought the time was not propitious, that in every step which we took in reference to this measure we would find ourselves encompassed with difficulties and dangers; but when I found that a portion of the commonwealth was earnestly fixed upon inaugurating the measure at the present moment, I was one of those who agreed to the compromise embodied in the ordinance of August 20. And I am prepared now—I came here for that purpose—to carry out that compromise wherever it is practicable in good faith. The name which was given to the State was a part of that compromise. It was a concession, made by the one side to the other. The ordinance with that provision in it was submitted to the popular vote, and has been confirmed. That whole ordinance is a compromise; and so far as we can, so far as may be practicable under the circumstances in which we now find ourselves placed, I hold it is my duty to act honestly and fairly in carrying it out.

I have no particular fancy for the name which is proposed but there is evident propriety in it. If we will look abroad throughout the Union, we will find that many of the states are named after the principal rivers which run through their territories. Gentlemen have referred to Tennessee and Kentucky; there are Missouri and Illinois, Mississippi, Kansas, and Ohio, all named after the principal rivers of their territory—Arkansas, Alabama. It may be considered, in fact, the general practice in regard to ascertaining and determining the names of states.

But what have we here in western Virginia to attach us to the name of Virginia. Sir, I have been an inhabitant of western Virginia for thirty odd years. During that time what have we received here but oppression, and outrage I may say, from the State of Virginia. During that time our people having been constantly complaining of the course of policy that has been forced upon them. We have been denied by the State of Virginia, for many long years, our proper share in the representation and government of the State. Look at the policy of Virginia in regard to improvements. Loaded down with a debt from which she never can recover, the proceeds of that debt invested in public improvements and public buildings. Where is the one foot of these improvements—where is the one public building—within the borders of western Virginia? Is there anything in the proceedings of the session of the convention at Richmond that should attach us to this name? Was not every measure attempted to be forced upon us against the earnest protest of our people. Did they hesitate on our account to adopt a measure that would have ruined us forever? When they supposed, not that it was to the interests of the people, but to the interest of the conspirators who had been the leaders of the people heretofore in eastern Virginia? Aye, they would have transferred you without asking your consent, at once to the Confederate States; they would have been glad to transfer the war to the borders of the Ohio river.

What has been the policy of Virginia throughout? Are we going to keep that policy along with the name, when we come here for the very purpose of revolutionizing that policy in every respect almost in which it is possible for us to do so? Are we still to retain the name? Are we to change everything in Virginia but the name? Shall we make a change in everything—in all the essentials—and yet stick upon this slight matter? Shall we proclaim in the very act which this Convention is now about to adopt that we feel grateful for the favor of the State of Virginia as heretofore bestowed upon us? No, gentlemen, no! I want to cut loose from these recollections. I want to have the new State, not merely in substance, but even in name. A resident of the state as I have been more than thirty years, I have no hesitation in proclaiming to this Convention and my constituents that there is nothing in the conduct of the State of Virginia to the people of western Virginia that entitles her or the name to our attachment.

Gentlemen, this thing may have some practical effect. You are so attached to Virginia that you are unwilling to lose the name. You look for immigration from other states. Will it be one of the means of inducing them to come here that you tell them that this is Virginia still—that you are to create the impression that Virginia policy is still to govern? Gentlemen, let that impression go abroad through the land, and the very name of Virginia, the very idea that Virginia may still prevail over this portion of the State, will prevent hundreds and thousands from coming within your borders.

For one, gentlemen, I shall vote against the motion. I consider the name—though I have no particular attachment for that name—I consider the name selected peculiarly appropriate. There are two rivers Kanawha within our borders. The principal rivers within our boundaries are the Kanawhas—the little and big Kanawha. We are just pursuing the example which has been provided in a dozen or twenty instances around this country. But if Kanawha is stricken out, I do not want to see anything that has Virginia to it inserted in the blank.

MR. CALDWELL. I beg leave, sir, to remind the gentleman who has just taken his seat that previous to his making Virginia his domicil, this portion of the State, sir, had a name, was designated by its peculiar name and for years past has been designated by the name of Western Virginia. Now, sir, I am not in favor of the renovating or changing of names or even constitutions. We, sir, in western Virginia have been struggling for western Virginia rights ever since the oldest member of this Convention can recollect. Western Virginia has been made dear to all of us; and I think, sir, that for that reason, if no other could be assigned, Western Virginia is the most proper name for this new State.

The gentleman has adverted to the compromise action of the last convention. I was a member of that convention. I was not, however, a member of the compromise committee; and it is the first time, sir, that I have understood that we compromised away the name. The compromise as I understand it, sir, in part, or in chief, was to submit to the people whom we propose to comprise in this new State the question whether a new state should be formed or not.

Now, sir, members have risen here and told you—and I have no doubt about the truth of it, for I know how it was in my own county,—that they voted for this new State under protest against the name. As has been said it was not because of any particular objection to the name of Kanawha, but because they desired as west Virginians, in asserting western Virginia rights, should bear the name of Western Virginia. It is for this, sir, that I desire that the name of Kanawha shall be stricken out, and that an opportunity may be given to name the State, sir, Western Virginia.

MR. WILLEY. I do not propose, sir, to enter into any discussion particularly, this morning, in regard to this matter, but simply to state to the Convention what I understand to be the desire of the constituency which I represent. So far as I have had any communications with my constituency, I have understood from them that there was some reason why they were very much opposed to the name of Kanawha. Amongst some that they assigned is one that it is a very hard name to spell (Laughter). For myself, Mr. President, I will say that I have no objections personally. I have no objection to any name that is convenient, though I will say that in this case I think the rose would smell sweeter by some other name (Laughter).

The main object I have in view is to adopt such a course and policy as would result in securing to us a division of the state, and a separate commonwealth. Personally the name is a matter of no importance to me. There was a remark, dropped by the gentleman from Ohio which it appears ought to be considered, that in the last convention the name was a matter of compromise. Now, sir, if it involved any principle, every obligation of good faith after the election of members of this body under the ordinance of the last Convention, would indicate that we should adhere to that. But, sir, by changing the name, we violate, in point of fact, no principle; we inflict no wrong on the parties who entered into that compromise. Another remark of the gentleman I referred to and that is this: after recounting the wrongs which western Virginia had received from the unfriendly legislature of the East, he wished to cut loose from the recollections. Sir, behind that unfriendly legislation, there are recollections that I as a Virginian could stand up and be proud of anywhere on the face of this broad earth. It was the land of Washington and Henry—where the very principles that we are here today to vindicate received their first impulse—where the ball of the Revolution received its first propulsion.

And there is another remark I desire to make. My friend from Marshall (Mr. Caldwell) has said we have been contending for our rights as western Virginians, under the banner of western Virginia. In the short period of my life, I have been contending to the best of my abilities to vindicate those rights. That flag has never struck; it still floats; it is about to be victorious; and on our proud mountains I want it to wave still with New Virginia or Western Virginia inscribed on it. We have fought under that flag heretofore. We are about to triumph under it. Let us retain the name.

Why, sir, as I said but a moment ago, there is nothing in point of fact, in the name. I am willing to accept a new state under any name; but upon the whole it occurs to me that there is a propriety in reserving the name that has hitherto distinguished us. But especially, sir, I shall feel constrained to cast my vote by what I know to be the wishes of my constituents.

MR. LAUCK. I wish to reflect here in my votes and in what I have to say the views of my constituents. I know that they are opposed to a man—or at least I have heard no person in the bounds of our whole county that was willing, to the name. We are told that the name was a compromise. I must say when we went into the election in our county, we went into it with a protest against the name. The delegate that was in the convention that passed the ordinance for the new State told us it was a mere formal matter, and that it was expected this Convention would take action upon the name. In my talk with the people there during the canvass in reference to the new State, I was bound to pledge myself to them to use all the influence I had here to change the name. For they were not willing to have the new State at all if Virginia was to be stricken out.

Now, sir, so far as the name is concerned I care very little. Principles are what I care for. We are here to get a new state. But we must have some little regard for individual preference. There are other names aside from Western Virginia and New Virginia, perhaps which would be as proper as these. My friend from Ohio wanted nothing that had Virginia to it. The name I confess has lost many of the charms it had for me once. The sound of Virginia has not that effect upon my heart which it had a few years ago. And I would say if we retain Virginia a very proper thing would be Loyal Virginia (Laughter). But I think there are other names some of which might be adopted. Columbia would be a beautiful name. I am willing, though, when this name is stricken out to fill the blank with any the Convention thinks best.

MR. PAXTON. Mr. President, I have no special partiality for the name of Kanawha. I shall be as well satisfied and perhaps better with many other names suggested; but the difficulty that presents itself to my mind has been referred to before by gentlemen who have been on the floor. It is this: Have we a right to change that name? The ordinance of the Convention of the people which called this body into being prescribed the name. Are we not bound by that ordinance? And is it not our duty wherever it may be practicable to maintain it. If we depart from the text in this instance may we not do so in any and all other instances? Where would such a precedent lead us? Will not we be entirely at sea? However much I might be disposed to adopt some other name, I shall be constrained to vote against striking out the name of Kanawha unless I can be satisfied at least that we have a right to change the name and that such a precedent will not prove injurious and detrimental to our further action here.

MR. VAN WINKLE. Mr. President, I have listened with considerable interest to the remarks on this subject, and as near as I can find out with the exception of, I believe, two gentlemen on one side and one on the other, nobody cares anything about it. It seems to me that with the exceptions I have named, the gentlemen do not feel disposed to take exception to this name; it is their "constituents," or it is the desire for something else and really no objections to the name by itself as has been stated. I think perhaps one complained of its euphony. I think it is one of the most euphonious words with which I am acquainted. Almost every letter in it has a soft and musical sound. I did call upon the gentleman who made the motion to strike it out to give us some reason why the name Kanawha should be stricken out. It had been placed upon the proposed State as the result of a compromise in the committee of compromise in the August convention; the gentlemen here present who were members of that convention will remember that it was stated upon the floor of the convention by Mr. Carlile, chairman of the committee when the report of the compromise committee was brought in and it was proposed to change the name, that the name was a part of the compromise.

MR. LAMB (in his seat). Mr. Carlile was not chairman of that committee.

MR. VAN WINKLE. The gentleman from Ohio informs me that Mr. Carlile was not the chairman. Well it was so stated by Mr. Carlile and it was within the knowledge of every member of that committee of which the gentleman on my left (Mr. Lamb) was one. I was another, Mr. Ruffner was another, Mr. Farnsworth was another, Mr. Carlile was the fifth, and—I forget at this moment who the other member was. So far then as the action of the committee before the convention was concerned, they compromised that action by withdrawing the motion to change the name when it was stated that it had been settled as the result of compromise. So far as that goes I think the name ought to be considered fixed. I do not say, sir, that if there is any grave and important reason for changing the name that I might not yield; but until some reason stronger than any that have been offered here yet can be shown, I much prefer that the name fixed in the ordinance should stand.

Well, sir, one gentleman tells us that he is a Virginian. Now, what I very much fear from the indications thrown out all around us on this subject is that several gentlemen intend *to be* Virginians after we have separated from Virginia. Now, sir, I should like to know whether when we have organized a new state; when the wheels are all in motion; when we meet for the purpose of transacting business appropriate to our new State; when there comes before us questions for consideration such as we maintain our old Virginia is not able to dispose of—questions relating to our peculiar situation: when such questions come up I apprehend, sir, that we are to be told, they did not do so in old Virginia! I apprehend, sir, that if the feeling by which it is now attempted to fasten the old name on the new State—putting old wine into new bottles, old cloth into new garments—I say, sir, if this spirit with which it is now attempted to fasten the old name on us prevails, we shall have no precedent we will be free to refer to in the action of states all round, in the action of any communities anywhere, but we shall be told, this was not done so by old Virginia, which we are about to repudiate. Aye, sir, and if gentlemen do not mean that—if that is not to be the effect of it on the minds of gentlemen here—nevertheless, sir, it will be the effect produced on the minds of others outside. If we are so servile to old Virginia, now that we are about casting off the fetters, if we cannot forget our servile habits but must cringe and bow the knee to Old Virginia—I think, sir, this movement had better stop precisely where it is now.

Sir, we are like the Israelites of old, we have crossed the Red Sea, and whether Pharaoh and his hosts are drowned we have no precise information, but we have just entered upon the borders of the wilderness, upon that desert where we should call up all our courage in order to encounter what is inevitable, before we can reach the promised land. And, sir, as of old the cry is going up "Would to God we had died by the hand of the Lord in the land of Egypt, when we sat by the flesh pots and when we did eat bread to the full" (Laughter). We are only in the beginning of this effort, yet here is the cry going up, "Would God we were sitting in the shadow of the Richmond convention, with the peculiar guardians of the rights of the people—we who believe in the equality of citizens and are enjoying all the benefits they have conferred upon us for fifty odd years." This is the sense, sir, of any attempt to retain in the name of the new State, the name of the old. Those gentlemen who are so tender for their old mother, should be a little more magnanimous, sir, and when they are going to rob the old lady of her territory should not steal her name too (Laughter).

Sir, there is more in this than perhaps I have said. If you make an agreement with eastern Virginia that after the division takes place, one is to be called East and the other West, or one is to be called Old Virginia and the other New, there might be less impropriety in it; for then it would indicate a division of territory, but, sir, under any circumstances they are to retain the name. They are to be Virginia and we are to be Little Virginia or New Virginia, or West Virginia, or some other soubriquet which is to degrade us in comparison with them. That is what gentlemen are driving at, sir.

It has been said, sir, that there is to be a difficulty because we have a county called Kanawha; that the State should not be called by the same name; that it is unusual. I think the gentleman who employed this argument is not correct in this. There is in the State of New York, the city and county of New York. I think in the State of Ohio an attempt has been made to build an Ohio city, somewheres up towards the northwestern portion of the State. We have Indianapolis, the capital of Indiana; and the same thing has been done otherwheres. Further, sir, that objection is not one of sufficient importance to govern us in reference to this matter.

We are reminded of historical associations again. The gentleman from Monongalia has told us it was the land of Washington and Henry. Sir, if the gentleman is going to fix it upon that point, it was eastern Virginia that was the land of Washington and Henry; and I apprehend, sir, that Washington and Henry, and that galaxy of patriots at the same time that they are the most numerous and the brightest in the constellation that enlightened our Revolution,—yet I apprehend no man will say that Virginia or any other state has a right to appropriate them. Sir, these names are National. They belong to the United States of which we are and will be a part; and we can claim them as our own and so may every other citizen of the United States, I trust. And as for historical considerations, if that is the kind of historical considerations, sir, it is no wonder that this a perfect wilderness at the time these great names were making should not have produced a portion of those men. But, sir, it has its own historical considerations. If we will refer (I think) to the "Notes on Virginia" of Mr. Jefferson, we will see that there are some historical associations connected with the valley of the Kanawha, as we call it, but as he calls it or spells it "Kanaway"—with the accent on "Kan" and "way". Yet, sir, how does this affect the question one way or another? Does either name or any name perpetuate or make more potent those historical considerations, of actions of which we have all occasion to be proud? Certainly not, sir.

But to come down now to the bare point of getting a name, I think it is an indication or evidence of the poverty of the country in seeking to avoid the rule that has been adopted in naming States elsewhere. I do not mean poverty in the world's goods, but in its home literature, or something of the kind. We have the names of all the capitals of Europe repeated in this country, some of them describing villages, with a church, black-smith-shop and a house. The old Roman and classical names are repeated in this country, and such is the dearth that we have them forty times over. Look at this naming of places one after another as it has been exhibited in this country. We have Springfield, Massachusetts, Springfield, a town of some note in Ohio, Springfield the capital of Illinois, Springfield in Missouri, and so on. Again, Charleston, South Carolina, Charleston near Boston, Charlestown in Jefferson county and Charleston on Great Kanawha, and there is a little bit of a Charleston somewhere on the Missouri river. And when you take up a paper to read, there are so many places of the same name, you cannot tell which you are reading about, until you see certain circumstances detailed, and then you can give perhaps a good guess that it is not the one you thought it was (Laughter). This imputation does not apply to the general government in naming our ships of war. Systems have been pursued which have given them names that always sound well when you hear them. The ships of the line I believe are named after the states. The frigates, or another large class of vessels are named after the rivers; and, sir, within a few days we have heard the Wabash and Niagara and other of those beautiful names taking their part in fighting the battles of the country.

Again, sir, in naming the states, new states have almost always taken their names from the territories christened by Congress. A system has obtained and has been very regularly carried out to name them from the principal river or some other great natural feature. The gentleman from Ohio (Mr. Lamb) has named several of those names, and they have been alluded to by others. There are several others that have not been named by gentlemen here. There is Michigan, named from its lake, and Iowa and Minnesota, and Nevada and Utah, territories, from their principal rivers. Here is a system then that has been established, and one that has been admired, which gives you a name that is simply a name. It is not essential that a name should have any particular meaning attached to it. It is a name simply to be for use in referring to and so on. We merely ask that the State may be named in accordance with this system which has prevailed since the formation of the government after its principal river. It is true, sir, we have a part of the Monongahela in our borders, but that runs into Pennsylvania. There may be other rivers having their rise within our bounds but I do not remember any considerable one. There are no other rivers of any magnitude that are entirely within the territory of the proposed State. In the late convention, in a substitute that was offered was the name Allegheny. The name of the mountain range was adopted. The substitute, however, as a whole was defeated, and when we came into committee the question was between Allegheny and Kanawha; and, sir, (I suppose I may state without violating any propriety) on account of the limits we were then giving to the boundary, in many places not touching the mountains at all, it was thought that name would be inappropriate and by general consent Kanawha, derived out of the general system that had obtained in the United States, was adopted.

I do not know, sir, that it is worth while to dwell any longer on this subject. I have, and I wish it to be understood,—I have a positive objection to adopting anything which compels us to attach a Virginia to it. If we could have Virginia by itself I would take it and be thankful for it; but if we must have West Virginia or New Virginia, or, as the world will think, Little Virginia, I shall most certainly feel if it is persisted in after the discussion that has taken place, and under the circumstances—that it comes before us as a compromise—I certainly shall think that at least there is a strong affection somewheres for the fleshpots of Egypt (Laughter).

MR. HERVEY. I shall vote for striking out; first for the reason that my constituents are opposed to the new name. Second, because I am opposed to it myself. Third, because neither myself nor my constituents knew anything about this compromise. I have the further reason that I do not understand we are bound by any particular rule as to precedent; that we are free to choose our own name. I therefore feel free to declare to the Convention that I shall vote for the change, believing that I am bound to do so.

MR. STUART of Doddridge. I had not, Mr. President, intended to make any further remarks on this question; and had it not been for the particular mode of argument of my friend from Wood, who seemed to impugn the motives of gentlemen here, who advocated this change, I should not have added a remark. The gentleman has predicated his arguments on the technical ground that this name was a matter of compromise in the committee. Well now, Mr. President, is this body to stultify the voice of their constituents—the whole people of northwestern Virginia—from the fact that four or five in a committee room made a compromise? I do not care, sir, how honorable that committee may have been, I do insist that we shall not stultify the voices of our people simply to accommodate the views of a little committee that met in a dark corner of this building. Those are my views on that. I do not wonder that the gentlemen who have taken the opposite side of this question are not so much attached to the name of Virginia as some of my constituents are. I can fully and freely apologize for you, gentlemen. But that you should attribute wrong motives to us, is something I am not so free to excuse.

MR. VAN WINKLE. I impugn the motives of no one.

MR. STUART of Doddridge. Yes, sir; but you say our motives should be impugned because we want to strike out this name on account of the wishes of our constituents, that we are longing for "the fleshpots of Egypt" &c. I do not think, sir, that it applies at all. I must admit that I love the name of Virginia, as indicated by my friend from Monongalia; and I believe, sir, if the question was propounded as to who is entitled to the name that it would be accorded to this people. The fire and patriotism that animated our fathers who fought for our liberties appears to have settled down on the people of northwestern Virginia; and here it is, sir, that Virginia appears in her true and noble character. Certainly, we are entitled to the name.

I am not actuated alone by a wish to conform to the wishes of my constituents, but, from my heart I love the name of Virginia; I love the people and the territory of Virginia; and I am unwilling to array all the wrongs and evils she has done, and look at the dark side of Virginia alone; but I would sometimes look at the brighter side, and that is the side my people look upon. And they are attached to the name; and I will say, sir, that although I am attached to the name of Virginia, I would be as far from wanting to sit under the shadow of Richmond, this day I believe, as my friend from Wood. And I know, sir, it is not the wish of my constituents. It is a familiar name. It is a name I have listened to ever since I have been able to speak—that of West Virginia. It is familiar all over this broad land of our country—West Virginia. Something attaches to the name that ennobles us in the eyes of the country. I intend so far as I am concerned, that we will have it.

Now, sir, I think the technical objection raised by the gentleman from Wood should have no bearing or weight before this body—that a little committee should stultify the voice and wish and will of their constituents. If we change the name and submit it to the people within the proposed boundaries of the State, and they adopt it, it becomes the will and wish and pleasure of the people. We stand here to represent them. We are the people; and if we think it is their pleasure that the name be stricken out we act as the people; and certainly when it is endorsed by the people it is legitimate and proper and there can be no technical objection to it raised.

MR. LAMB. I do not rise for the purpose of repeating to the Convention any of the considerations which I have already urged upon this question, but simply to draw their attention more distinctly to the attitude in which the question presents itself before them; to draw their attention more distinctly to the provisions of the ordinance of August 20th. The first clause of the first section of that ordinance reads as follows:

"The people of Virginia by their delegates assembled in Convention at Wheeling do ordain that a new State to be called the State of Kanawha" should be instituted. Then in the second section of that ordinance a provision is contained that "on the fourth Thursday of October following a vote should be taken on the formation of the new State" as hereinbefore proposed.

The June convention, sent here by the people of Virginia to take such measures as their safety and interest might require, assuming to act in the name of the people of Virginia, ordained that a new state should be formed under the name of "the State of Kanawha." The question upon the fourth Thursday of October was distinctly put to the people: shall a new state be formed as proposed in this ordinance? and by an overwhelming vote of the people they have ratified and confirmed this action of the June convention.

The question is a very pertinent one as proposed by the other member from the same county as myself: are we at liberty to set aside not merely the ordinance under authority of which we are assembled here, but to set aside the compromise, and the direct confirmation of that act by the people themselves. I admit, gentlemen, if there was any necessity for it; if any great interest would be sacrificed by adhering in this matter to the ordinance of August 20th—that the safety and interest of the people would justify us in disregarding it, I should feel free to act if the case presented to me was of such a character—free to act for the interests of my constituents. But as the question is presented to this Convention I see no propriety whatever in the assumption of power proposed.

MR. POMEROY. I move we adjourn till three o'clock. It is nearly one o'clock, and a number wish to speak, the gentleman from Monongalia among them, as I understand.

The motion to take a recess was agreed to.

THREE O'CLOCK, P. M.

MR. VAN WINKLE. Before the gentleman from Monongalia proceeds, I would take this opportunity to explain the "imputation" which the gentleman from Doddridge says I cast upon him and others. I had no intention, sir, to impute any improper motives to anybody. I think I somewhat guarded my language against such a conclusion. I wanted to warn gentlemen against the bias that might be on their minds owing to the circumstances. The gentleman from Doddridge very cleverly returned the "imputation." I do not see him present. I regret it. He instanced almost by name, by an indication as good as if he had named the names, myself and the gentleman from Ohio (Mr. Lamb) sitting by me, as a plain reason for the course we were taking, that we did not happen to be born on the soil of Virginia. Well now, sir, it might be, if I was in the habit of taking offense at such things or carping at them, I might ask the question whether it is to be hereafter in the new State as heretofore in the old one, that a person who did not happen to be born on the soil is to be ostracised to any extent whatever. The gentleman from Ohio said that he had been here over thirty years. I have lived in Virginia for twenty-six years, have had children born unto me here; my dead are here; all that I have and all that I expect, in the way of property in the world, is here; and if that evidence of attachment to the soil, evidence to satisfy any person of the inducements at least if not a patriotic feeling towards the soil on which I reside, I shall always be unable to furnish it.

MR. WILLEY. The remarks of my friend—and I hope I am authorized, as I feel proud, to call him so—have made it unnecessary for me to occupy the floor in making even the few remarks which I had intended to make.

I am very glad to understand from that gentleman that he did not intend to impugn the motives or impeach the loyalty and fidelity of the members of this Convention, to the interests of western Virginia or to the obligations resting upon them as faithful members of this body. I am all the more willing, sir, to accept the explanation of the gentleman from the fact that a contrary interpretation would be utterly at war with all my previous knowledge of his gentlemanly bearing and perfect courtesy. As to the other matter to which the gentleman adverted, I had nothing to say, and have nothing now to say. I am willing to accord to him or to any other member of this body loyalty and fidelity to and identity in interest with western Virginia, the same as if they had been born upon her soil. The idea of the place of nativity has no weight with me.

I desire to notice the argument which was adduced on the other side; but I shall certainly not be drawn out into any extended remarks about any subject connected with this matter.

It is objected that the people whom we represent, already ordained in the previous Convention that this State should be called Kanawha; and that they subsequently ratified by their vote the ordinance as made by their delegates in the previous convention. Well, sir, if we were to receive that as a test of the wishes of the people in regard to the name, it would be at once conclusive with me; but knowing my constituents as I do, and knowing their wishes in the premises, and hearing as we have all heard from many members of this body the views of their constituents in the premises, I am induced to believe sir, that a large majority of the people within the limits of the proposed new State are not satisfied with the name of Kanawha. Representing my own constituents, I, however, undertake to speak only for them; and I know that with scarcely a dissenting voice in the twenty-four hundred votes of Monongalia county, they are dissatisfied with the name. As to myself, I can say in all sincerity that it is to me a matter of the most perfect indifference. Give me a new State and call it whatever name will be acceptable to the people, and I am satisfied.

As to the power of this body, I think it complete. We are as sovereign as the Convention that made the ordinance alluded to. We are the people as much as that body was the people; and our action is no more final than the action of that body was final. Our action, as the action of that body did, has to go back for the sanction of the people.

It occurs to me, sir, without extended argumentation, that our power in the premises is perfect; and that settling this question on any other interpretation of our powers would very much hamper us in regard to *projects* of vastly more moment that will be before the Convention. We are proposing absolutely and unconditionally to include in the new State a very considerable number of other counties than those included by the ordinance. Yet I think we have the power to do so. It is to go back to the people. They are to determine it at last. So much, sir, for my views of our power, and for an answer to the argument used in opposition to striking out the word Kanawha.

As for the "fleshpots of Egypt," my friend and I used to be down there and I think we can both say we got enough of them (Laughter). We got a dose of them in 1851 that has lasted us ever since. I am very willing, sir, to place myself under my provisional Moses from the county of Wood (Laughter); ready to follow him in this new enterprise of ours; and I hope he will be more successful than his predecessor and not only get a sight of the "Promised Land," but will go over Jordan with us (Renewed merriment). I will say this, however, that it matters not to me whether you call this West Virginia or New Virginia or Kanawha or Potomac or Augusta or Allegheny, or any other name. I am satisfied, however, that my constituents would be best pleased with the name of West Virginia.

And while I am up I will take occasion to say that although I am done with the "fleshpots of Egypt," and hope to sever political connections as a state with eastern Virginia. I am nevertheless, ready, sir, to take anything good from them or any other place where I may find it. I am not to be frightened from what is right and proper and means good by any imputations meant or unmeant—by any prejudices whatsoever. I will take what is right and what is proper let it come whence it may; and if I can find anything in the old constitution that is best, I am willing to adopt it—anything in the policy or history of old Virginia, I am willing to adopt it.

Sir, there are cherished memories connected with that old state in old times that will never be obliterated while memory holds her seat. Whatever may have been the course of Virginia towards us in recent times, even West Virginia owes a duty which she ought to have the magnanimity to acknowledge. On her soil our own goddess of liberty was born; and however much her devoted followers may have discarded her worship by the introduction of false gods, still I cling to the memories of the past, and I shall cherish that until memory is no more.

Moreover, sir, we have fought this fight under the name of West Virginia. We are known and recognized as West Virginia —on the continent, over the sea, in Europe, and everywhere, we are spoken of as West Virginia, and as men rising up in the majesty of our love of right and of liberty and periling our lives and our fortunes and taking a stand in defense of our rights. We have been called and designated as western Virginians; and if I were to make a selection of all the names it seems to me that of West Virginia would be the most proper. We are not adopting the principles of old or east Virginia with the name. Such a conclusion is utterly illogical. We are standing by the principles upon which we have been fighting hitherto under the name of western Virginia; and we can stand as steadfastly and loyal hereafter when we are utterly cut off from political connection with east Virginia while the name is Western Virginia as under any other name.

I conclude, sir, for fear of my going off into an argument—by saying that personally it is a matter of the most perfect indifference to me what the new State is called. It is a matter of taste. It involves no principle; and I think the guiding fact which should influence our action here, is what name on the whole would best suit the majority of the people included within the new State. I believe, sir, West Virginia would do that. I believe Kanawha is not suited to a majority of them, and therefore for the present shall vote for striking it out, and I am perfectly willing any other name shall be inserted. That Kanawha shall be retained—I am perfectly willing to that personally, but I wish to consult the wishes and feelings of my constituents.

MR. SINSEL. After hearing the apology from the gentleman from Wood, I wish to make a few remarks.

MR. VAN WINKLE. No "apology", sir, I made an explanation. I offer no apology for anything I do.

MR. SINSEL. I was just going to reply to the remarks of the gentleman from Ohio in reference to this ordinance being binding. I had always understood or been taught to believe that when the people assembled in the capacity of a convention in a country like this, that there was no law to restrain them only the Constitution of the United States, the laws of Congress, and the treaties made under them—that it was presumed that we had resolved ourselves into our original elements, and that we could form any kind of a constitution that might suit the delegates best. We are, then, responsible to no other than our constituents. If we do a work here which does not give satisfaction to them, why they will vote it down. They have finally to decide this question. Then, if we are in our original elements how can the Convention that preceded us be above us? It is true we are dependent on the legislature of Virginia for our compensation. That is a small matter though. So I think that the ordinance passed last August surely cannot trammel us in the least. We have a perfect right to make such a constitution, and give such a name to the new State as we may think best, and submit it to the people for ratification or rejection. They finally pass upon it. We do not act finally in the matter.

MR. CALDWELL. I would ask, Mr. President, for the ayes and noes upon the question.

MR. PAXTON. Mr. President, before the call of the ayes and noes, I was going to ask the privilege of a single remark. It is not because I care for the name, but because I believe there is an important principle involved in this—a principle that will have a bearing—an important bearing—on our future action.

If we now vote to change the name, do we not declare at once, by the very first vote we take here—the first action towards making a Constitution—do we not absolutely ignore the ordinance which called us into being? It appears to me we do, sir. It appears to me we declare at the very outset that we are not going to be controlled by that ordinance. Is that not a very dangerous precedent to establish in the beginning of our proceedings? I appeal to gentleman to know if it is not? Shall we establish that precedent now, that that ordinance is in no manner binding? Because if we can depart from it in this instance, we can do so in other instances where there is the slightest pretext for doing so. For one I desire to enter my protest against that departure. If we adopt that course, for the future we shall be entirely at sea, without compass or rudder, and it will be a miracle, sir, if we are not wrecked on some shoal.

MR. BATTELLE. I desire to make a single remark, assigning the consideration that will chiefly control my vote on the matter now before the Convention. It is this: not only did the ordinance passed by the former convention fix the name, but it has been ratified by solemn vote of the people. And I find, so far as I understand my powers and duties here, no power to go behind that vote of the people. It may be very probable that there is some dissatisfaction with that name—that some individuals prefer a different one. But they have not in any authorized form expressed that wish to the Convention, and until they do so I shall be compelled to vote for what the people themselves have ratified by a solemn vote.

I will further say that should it be the pleasure of the Convention, in the exercise of a very questionable power, as it seems to me, to strike out Kanawha, I shall be opposed to substituting either New Virginia or West Virginia. We are now forming a new State. I for one would want a new name—a fresh name—a name which if it were not symbolical of especially new ideas would at least be somewhat indicative of our deliverance from very old ones. But the consideration I have first named is the one which will control my vote in opposing the striking out of the name of Kanawha.

MR. STUART of Doddridge. Do I understand that the ayes and noes are demanded?

MR. PRESIDENT. It is withdrawn.

MR. CALDWELL. No, Sir, I did not withdraw it.

The demand for the yeas and noes being seconded the vote was taken and resulted:

YEAS—Messrs. Brown of Preston, Brumfield, Caldwell, Carskadon, Cassady, Dille, Dolly, Hansley, Haymond, Hubbs, Hervey, Hagar, Lauck, Mahon, O'Brien, Parsons, Powell, Parker, Pomeroy, Sinsel, Simmons, Chapman J. Stuart, B. F. Stewart, Sheets, Soper, Taylor, Trainer, Willey, Walker, Wilson—30.

NAYS—Messrs. John Hall (President), Brown of Kanawha, Brooks, Battelle, Chapman, Harrison, Irvine, Lamb, Montague, Paxton, Ruffner, Stevenson of Wood, Van Winkle, Warder—14.

So the word "Kanawha" was stricken out.

MR. VAN WINKLE. I move to fill the blank by inserting "Alleghany."

MR. HAYMOND. I move to amend by making it "Columbia."

MR. HERVEY. I move to amend the amendment by substituting "New Virginia."

MR. STUART of Doddridge. An amendment cannot be made to an amendment.

MR. VAN WINKLE. It is clearly proper to amend an amendment. The amendment to an amendment has the same status as an amendment to a motion.

MR. CALDWELL. I suppose the first vote will be on the amendment to the amendment. I give notice that if that amendment is defeated I shall move to amend with the name of "West Virginia."

MR. STUART of Doddridge. I would like to know, Mr. President, what is the question now.

THE PRESIDENT. The gentleman from Wood proposes to fill the blank with Alleghany,—

MR. STUART of Doddridge. I understand that.

THE PRESIDENT. And the gentleman from Marion has amended it by proposing Columbia and the gentleman from Brooke has amended the amendment of the gentleman from Marion by proposing New Virginia.

MR. WILLEY. Mr. President, I understand the question to be this: The gentleman from Wood moved to fill the blank with Alleghany. The gentleman from Marion moved to amend that by substituting Columbia, and the gentleman from Brooke moved to amend that by substituting New Virginia. So the question, as I understand it is on New Virginia.

MR. LAMB. When we cannot untie a knotty proposition, it may be better to cut it. I should move, if it would meet with general concurrence, that members write upon separate ballots the names they prefer, that those ballots be handed to the clerk to be by him counted and the name which has a majority in its favor be inserted.

MR. CALDWELL. I second that, sir; it is a perfectly fair proposition.

MR. POMEROY. If I understand that it would be this: the clerks would take down all the names proposed and get an assistant, and one call the roll and the other record the vote; and then according to the rules the one having the lowest number would be dropped until we reached the majority vote. I would by no means be satisfied to let this matter be decided by a mere plurality. That would be the quickest way; and then every man would vote his own sentiments; and then after the whole thing is decided I think we will all agree to be satisfied if we do not get just the name we wish.

MR. STUART of Doddridge. I think the question is on the motion of the gentleman from Brooke. That is the only question that can be entertained by this body.

THE PRESIDENT. The Chair doubts much whether the motion of the gentleman from Ohio would be in order.

MR. CALDWELL. Only by general consent.

MR. LAMB. It was not a motion so much as a suggestion. I did not consider myself as making any motion. The amendments might be withdrawn to allow us to fix on a mode of taking the vote.

THE PRESIDENT. Will the gentleman from Brooke accept?

MR. HERVEY. I have no objections.

MR. STEVENSON of Wood. I would move, to lay the motion of the gentleman from Wood with the amendments, on the table, in order to get at the other matter properly. If that does not carry it will show the house are in favor of taking the vote in this way.

MR. POMEROY. The gentleman from Brooke yields to let the vote go in this way.

MR. HAYMOND. I withdraw my amendment.

MR. VAN WINKLE. Since the gentlemen withdraw their amendments, I withdraw my motion. I would like the mode to be distinctly understood.

Then we have nothing but the proposition of the gentleman from Ohio before the house.

MR. LAMB. The proposition then would be to let the roll be called, and that each member in response to the call of his name mention the name he would prefer for the new State, and that if any one name have a majority it shall be adopted.

MR. BROWN of Kanawha. It was impossible to hear the gentleman who just took his seat. I wish distinctly to understand the question before I vote.

THE PRESIDENT. The Chair understands the proposition to be this: that persons having preferences for different names—New Virginia, West Virginia, etc., will name them, and the vote will be taken, every person voting for that name he prefers the new State to have.

MR. BROWN of Kanawha. Each gentleman will then vote for the name he prefers?

THE PRESIDENT. Yes.

MR. BROWN of Kanawha. And if any name has not a majority of the whole House, the lowest one be dropped?

MR. LAMB. That would be the fair method of putting the question: drop the lowest until a majority can be had.

THE PRESIDENT. The lowest will be dropped until some one name has a majority of the vote of the house.

The question is on the motion of the gentleman from Ohio.

MR. STUART of Doddridge. I rise Mr. President, to know what the motion of the gentleman from Ohio is. (Laughter)

THE PRESIDENT. Will the gentleman from Ohio reduce it to writing?

MR. LAMB. I have attempted to state it several times. It is, that the roll should be called, and that each member in answer to his name should mention the name he preferred for the new State, to be taken down by the Secretary, and that if any one name has a majority of the votes of the members in its favor, that shall be adopted as the name of the new State, but if no name has a majority of such vote, the lowest shall be dropped and the roll shall be called again, and so on until such majority is obtained.

MR. STUART of Doddridge. Well, in order to get some sort of action, I move to amend by saying the blank shall be filled by West Virginia. I want to get some definite proposition.

MR. VAN WINKLE. We withdrew our motion in order that this motion might be put. If it is to go in that way, then my motion to insert Alleghany has the preference. The Convention can take the vote whether they accept the amendment of the gentleman from Ohio or not.

THE PRESIDENT. The Chair is of opinion that the motion of the gentlemen from Doddridge would not now be in order.

MR. STUART of Doddridge. I do not wish to be out of order. I withdraw it.

The motion was adopted and the vote taken with the following result:

For "West Virginia"—Messrs. John Hall (President), Brumfield, Caldwell, Carskadon, Cassady, Dille, Dolly, Hansley, Haymond, Hubbs, Hervey, Hagar, Irvine, Lauck, Mahon, O'Brien, Parsons, Parker, Sinsel, Simmons, B. F. Stewart, C. J. Stuart, Sheets, Soper, Taylor, Trainer, Willey, Walker, Warder, Wilson—30.

For "Kanawha"—Messrs. Brown of Kanawha, Battelle, Chapman, Harrison, Lamb, Montague, Paxton, Ruffner, Van Winkle—9.

For "Western Virginia"—Messrs. Brooks and Powell—2.

For "Allegheny"—Messrs. Pomeroy and Stevenson of Wood —2.

For "Augusta"—Mr. Brown of Preston—1.

So it was determined to fill the blank with "West Virginia".

MR. VAN WINKLE. I now move, sir, the adoption of the first section as amended—that is under the rule: it does not pass upon it finally, but it passes for the present.

The section was adopted.

The second section was reported as follows:

"Sec. 2. Writs, Commissions and other publications issued under State authority, shall run in the name of, and official bonds shall be made payable to, the State of Kanawha. Laws shall be enacted in the name of the State of Kanawha. Writs shall conclude 'against the peace and dignity of the State of Kanawha'."

MR. VAN WINKLE. There is an error in this second section. In the last line but one the word "writs" should be "indictments". It was so entered on the minutes. I move to substitute the word "indictments" for "writs" in the last line but one.

Of course it will be understood that the name will be altered. wherever it occurs.

The amendment was adopted.

MR. PARKER. I would move, Mr. President, an amendment to the same section; after the word "writs" in the first line and before the word "commissions" immediately following, to insert the words "or other legal process." My purpose in that is: I understand the legal meaning of the term writs does not include criminal processes but merely civil processes or suits. It does not include complaints, warrants or indictments. It is merely and solely confined to civil actions, or rather a suit at the instance of a private individual to redress a private wrong—not a suit or a process in behalf of the public to redress a public wrong.

Well, as I understand it, in this Country it is brought by complaint before some magistrate. On that complaint the warrant is issued. Or before the grand jury, when an indictment. Or before the prosecuting officer—state's attorney, or some attorney acting for the public, in some cases by information. "Other legal process" being quite a general term, would, it seems to me, cover all that the word "writs" does not cover, that is all legal processes. "Commissions and other publications." I do not myself understand precisely the extent in which the term "publications" is intended to be used here.

MR. VAN WINKLE. "Know all men by these presents." Everything that begins so is a publication.

MR. PARKER. Well, "Know all men by these presents." It is to run in the name of the Commonwealth.

MR. VAN WINKLE. It goes in the name of the State, issued under state authority.

MR. PARKER. I have Blackstone here. The legal gentlemen are many of them here, who I think will recognize a definition:

"First then of the original or original writ; which is the beginning and foundation of the suit. When a person hath received an injury and thinks it worth his while to demand a satisfaction for it, he is to consider with himself, or take advice, what redress the law has given for that injury; and thereupon is to make application or suit to the Crown, the fountain of all justice, for that particular, specific remedy which he is determined or advised to pursue. As for money due on bonds, an action of debt; for goods detained without force, an action of detinue or trover or if taken with force, an action of trespass *vi et armis*, or to try the title of lands a writ of entry or action of trespass in ejectment or for any consequential injury received, a special action on the case."

To this end he is to sue out and purchase the original. I think it is very clear that the word "writs" would not include criminal process. I had a motion to amend further that section.

THE PRESIDENT. One at a time.

MR. LAMB. The members of the Convention very well know that I am not a lawyer, though I have read Blackstone in my time, and practiced law at one time for a considerable while. The word "writs" I take it means merely writings. That is its derivation. Whatever is written and attempts to speak by authority of the State should be in the name of the State of West Virginia, is the meaning of it. The word "writs" according to my recollection—and it is some twelve or fifteen years since I studied law, but I studied it once pretty hard—includes all process, as well the writ that is to commence the suit, as the writ of execution, which would be an unnecessary multiplication of words it seems to me. There are lawyers in this Convention who will correct me if I am mistaken. If we should use the words "writs or other process", it would be an unnecessary multiplication of words because if I understand it "writs" includes all process. Such was certainly the opinion of the convention of 1851 that framed our present constitution. The phraseology in this clause is more extensive than it is in the old constitution. The expression in the old constitution is simply "writs shall run in the name of the Commonwealth of Virginia." And we intend to include in that all that the gentleman wishes to.

I consider the amendment unnecessary but am ready to be corrected, of course, in this respect by the superior information of the lawyers who are present in the Convention.

MR. CALDWELL. I am satisfied the gentleman is entirely right. All process of every description emanating from a court, whether summons instituting a suit or other process following it, a subpoena and all that is a writ; but to obviate the necessity of the good people that inhabit the Commonwealth not all being lawyers and not understanding precisely what the word "writs" means, I suggest to my friend to accept the word "returns." He seemed to think a process issued by a justice, say for breaking the peace, would not be embraced under the term.

MR. VAN WINKLE. All these are called writs, as my friend has observed. Well "publication" as I understand in this connection is any thing that is made public; say any paper issuing in the name and by the authority of the State, which would in form issue in the name of the State of West Virginia. I do not think—I would readily accept the amendment if I thought it was necessary—but we had better avoid than encourage the multiplication of words if we have a word that will express the meaning. Now, sir, you will find that "writs" is the term used in the constitutions of most of the states. It covers all legal process, most certainly.

I am like the gentleman from Ohio who says he is a little rusty in the law. I have not been in practice for twelve or fourteen years; but my best recollection is that the word covers all possible law processes. I would inquire of the gentleman from Monongalia whether I am not correct in that?

MR. WILLEY. I certainly concur in the views of the gentleman from Wood. It is sufficiently comprehensive; and I think we ought to obviate perplexity above all things else in the Constitution. And many times there is such a thing as darkening counsel by words without number; and I have often found that in attempting to explain too much there was more difficulty in explaining the explanation than in explaining the original proposition. Indeed I question whether there is any necessity here for "other publications". Certainly I think at least we had better let it be as it is. It comprehends everything. You cannot imagine or conceive of a process issuing out of a clerk's office to be served on anybody that is to be attested by the Clerk and run in the name of the State that is not a writ.

MR. PARKER. It struck me as I have stated it. I am happy to be corrected by the legal talent and experience that are present. As the eminent gentlemen think that it is sufficiently comprehensive I certainly have with them the wish to use as few words as possible in this Constitution. I would withdraw the motion to amend.

MR. LAMB. I would prefer instead of "commissions and other publications" that the clause should read "writs and commissions".

I think it would be in better shape, and I make a motion to that effect, if I can find a second.

MR. HARRISON. I second that motion, sir.

MR. VAN WINKLE. I will, as far as it is competent for me to do so, unless some member of the Committee dissents, accept that amendment. I understand the legal gentlemen to say that those words will cover all the others.

The motion was agreed to and the section as amended was adopted.

The third section was read as follows and adopted:

"Sec. 3. The powers of Government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment."

MR. VAN WINKLE. Will the clerk read Section 4?

The Secretary read as follows:

"Sec. 4. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein."

MR. BROWN of Kanawha. I move the adoption of that section.

MR. PARKER. I would move an amendment. I do not see the reason why persons who have otherwise become residents in any state are to be deprived of voting. If there is any good reason for it I will withdraw the amendment.

MR. VAN WINKLE. The gentleman mistakes the sense of the sentence. He does not exclude a soldier of the United States who has really a residence in the State from voting. The soldier coming in acquires no residence while he remains such even if he remained beyond the time entitling others to vote, but he has a right to vote if he was a resident at the time of enlisting. The fact of being a soldier of the United States stationed on our soil no matter how long, does not entitle him to vote. If he was a citizen before he enlisted, his residence does not change.

MR. PARKER. What constitutes a residence? As I understand if I have a residence in any place, in any State, or one county, in order to change that residence I must leave that place with the intent of taking up my home somewhere else, in some other State or some other county, with the unequivical, unconditional intention of leaving that place; and still my residence continues there until I have fixed on a place somewheres else. Well now, this class of citizens in the military service—suppose their families live there with them. The question is what constitutes a residence. That is in the general provision as I understand where we define what constitutes a legal voter.

THE PRESIDENT. The Chair would call the attention of the gentleman to the fact that there is no motion before the Convention except to adopt the section.

MR. PARKER. I thought I had stated the amendment. I propose to strike out in the fourth section the words: "but no person in the military, naval or marine service of the United States shall be deemed a resident of the State by reason of being stationed therein." I would move to strike out. That is my motion.

Now, that was my view of the matter, that these gentlemen who are sworn in the service of the military service, that their residence,—what is meant by residence—a legal residence—is determinated like everybody else. If they come into new Virginia—a gentleman belonging to the service, brings his family here into Wheeling and makes this his home—not his temporary station on account of official capacity, having his home, say in New York or somewhere else where his family is—(he is then simply a sojourner as I understand it)—but if he comes here into Wheeling or into any other part of the State and bring his family with intent to make it his home—because gentlemen in the military service must have homes as well as other folks—this section places them without homes. Wherever their homes are, their residences are—which is the legal term as I understand it. The facts that constitute a legal residence in a military or naval officer are to be determined by the proper judicial tribunal, the same as to the home and legal residence of anybody else precisely. If there is any reason for it I should be happy to have light of the legal gentlemen.

MR. BROWN of Kanawha. If the gentleman's proposition succeeds, the State of West Virginia will be entirely at the mercy of the President of the United States; for he would have nothing to do but to march the army into the State, and let them remain here and he could carry any vote he pleases; and you become a slave at the foot of the Executive of the United States. Now the very object of this provision, to give citizens in the army the right of suffrage, is to exclude the citizens of other States temporarily marched into the State and remaining there, from voting. And it is an indispensable provision—One upon which the liberties of the State may entirely depend,—one which if conceded here may throw their liberties into the hands of the Executive. A citizen cannot acquire a residence in one place while residing in another; and *vice versa.* These citizens in the army of the United States, are, however, citizens—continue citizens—of those states, no matter where located, or if in another state five years; or if they reenlist for life, still they are citizens of their native state, having never changed their residence. Those are the persons to be excluded from the elective franchise here. Our own citizens who enlist in the army will be allowed to vote, but surely it would not be proper for Virginians to go into other States because the army might be located there, and turn the scale on other people's institutions. It seems to me therefore it would be highly improper to strike out the language proposed. In fact it would be a sacrifice of our rights to strike out this clause of the section.

MR. LAMB. The practical effect of this provision is certainly not to deprive any person of the right of suffrage who is entitled to it by residence or otherwise within this Commonwealth unless that residence has merely been as a soldier in the military or marine service of the United States. He would not acquire such a residence while in such service as would entitle him to vote; but if he is otherwise entitled to vote, it certainly is not the effect of the section to deprive him of that right. The remarks of the gentleman from Kanawha in reference to the necessity of such a provision is sufficiently conclusive. I would merely remark in addition to that, that this section is copied verbatim from the present Constitution of the State of Virginia. After the remarks, however, which I made this morning, I would not wish to be understood as recommending it to the adoption of this Commonwealth because I find it in the Constitution of old Virginia, but I find so far as I have examined the constitution of other States, a similar provision, in almost exactly the same terms, in the constitution of almost every State of this Union. In all these States it is considered necessary or proper. The constitutions of Ohio, Indiana and Illinois, as well as the constitutions of States upon the other side of Mason and Dixon's Line have it.

The amendment was lost, and the section adopted.

The fifth section was reported as follows:

"Sec. 5. Every citizen of the State shall be entitled to equal representation in the Government, and in all apportionments of representation, equality of numbers of those entitled thereto shall be preserved."

MR. HARRISON. I move to postpone the consideration of that section for the present. I think the gentleman from—

MR. BROWN of Kanawha. I move to amend by inserting after the word "preserved",—the last word of the section.

THE PRESIDENT. Does the gentleman from Harrison withdraw the motion to postpone?

MR. HARRISON. No, sir.

MR. BROWN of Kanawha. I will ask the gentleman to withdraw it until he hears the amendment I propose. I move to amend by adding the words "as near as may be". It requires what might happen to be a physical impossiblity. In all apportionments of representation, equality of numbers of those entitled thereto shall be preserved—" that might be impossible. I propose to insert the words "as near as may be".

MR. VAN WINKLE. I do not think the words are necessary, because I do not think any one could misunderstand the intent of this as it is. If you go to dividing up human beings you have to do it as near as you can—so as not to commit murder (Laughter). The thing has been so long in practice, that equality as a principle is not violated by these absolute physical or material differences that I do not think this amendment necessary. I will however accept, say, shall be "as far as possible" preserved. I will accept it in that form.

The amendment in that form was adopted.

MR. HARRISON. I renew my motion now, sir.

MR. WILLEY. I was simply desiring to have some reason wherefore. Of course a motion to postpone is not debatable.

MR. HARRISON. I merely wish to have further time for its consideration. It may be unnecessary to make any motion on the subject if I can have this understanding. After we adopt these resolutions can we hereafter set any of them aside?

MR. WILLEY. Yes, sir.

MR. HARRISON. O, then, I make no motion at all.

MR. VAN WINKLE. Will the clerk read the last section of the rules.

The Secretary reported it as follows:

"RESOLVED, That every report made by a standing committee, shall, in its turn, be considered, and be open to amendment, section by section, but the vote on the passage of any section or clause shall not be final. The question shall recur on the passage or adoption of the whole report as amended, and motions to strike out and to insert shall be in order."

The section, as amended was then adopted.

The Sixth Section was reported as follows:

"Sec. 6. The white male citizens of the State shall be entitled to vote at all elections held within the election districts in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason or felony, or who has been convicted of bribery in an election, or who has not been a resident of the state for one year, and of the county in which he offers to vote, for six months, next preceding such offer, shall be permitted to vote while such disability continues."

MR. STEVENSON of Wood. I would move as an amendment, sir, in next to the last line, to substitute "three" for "six". It would then read "in the county in which he offers to vote for three months" etc. When the question is stated I will make a single remark.

MR. POMEROY. I would offer an amendment to the amendment of the gentleman from Wood, that instead of "three months" we insert "thirty days". If we continue voting on the fourth Thursday of May, the three months would be as fatal to most men changing their residence as six months. They would not be entitled to vote for more than a year from the time they change. The great majority change on the first of April, and therefore the three months would cut them out of a vote until more than a year. And I cannot conceive why a taxpayer in the county of Ohio, residing here for years, seeing proper to change his residence into Brooke or Marshall, cannot vote as well as the people there, it being evident to those receiving his vote that he intends to make his residence there, when he is liable to be taxed immediately on moving into that county, is subject to the road laws, and so on. I offer the amendment to the amendment because I believe it is just and right that they should be entitled to vote where they have resided thirty days in the county in which they offer to vote.

MR. STEVENSON of Wood. Mr. President, I had written "one" instead of six but upon reflection I did not know whether the Convention would be willing to get down from six to one on a single amendment. I am glad my friend has suggested the thirty days. If he has no objection, sir, I am willing to accept that in place of my own amendment.

I need make only this remark, that I think six months is too long for persons residing in the same State to be deprived of a vote, in moving from one county to another, probably just across the line. I believe that in many of the States—at least in some I know—ten days is the length of time required in the district or county where the persons vote. Now, sir, if we wish—and I know every member of this new State does wish to settle up this new

State of West Virginia, we should make a liberal provision in regard to the exercise of the right of voting. If we incorporate these six months, or a longer time than that—or if we fail to cut it down to thirty days or three months—the result will be that we will exclude, or at least fail to invite the thrifty, industrious, intelligent class of people to fill up this new State. We want liberal provisions on this and some other matters, but especially now on this; and for this reason, sir, and some others that might be mentioned, I hope the amendment will be adopted.

MR. BROWN of Kanawha. The chief motive seems to be to invite votes from other States by a short term of residence. I confess, sir, that is the very thing I desire to prohibit. I wish citizens to come to the State of West Virginia to reside; not to vote merely but to vote as one of the rights of residence there. Now it seems to me in framing a constitution, one of the great fundamental ideas is guarantees, checks, reserves, on the liberties of the people. Let every man come and go as he pleases and vote as he pleases. These very guarantees are to secure our rights and votes, to prevent the evils that grow out of the very fact of the large latitude in the exercise of the right of suffrage. Let us take some instances for example. If an individual lives in one county and crosses the line a few weeks before the election, there would be no serious objection to permitting him to vote, but for the fact that it destroys a principle that may result in great injury to others than those who voted there. We have examples in our own country. Those who are familiar with the elections that have transpired in an exciting presidential contest, have seen large numbers of men sent from one section into another to vote and there go up to the polls and turn the whole result of the election, and as soon as the election is over go off to their own residence. That could be done here as easily as anywhere else. Make it thirty or ten days or twenty days, and there is no difficulty at all in practicing such frauds in times of great political excitement.

It ought to be remembered that this is a great and growing country and that in every political election in which there is great excitement enormous sums of money are raised to influence and carry elections. Large numbers of men are deported from one part of the country where they are not needed to another part where they are, to overpower and outvote the people there. The only safe guaranty you can have is to require a residence so long at the place that those who undertake it will find it a very unprofitable business to keep the parties there all the time. Experience has proved this and I am willing to be guided by the light of experience. You cannot make a rule, unless you throw away all restrictions, that will not operate to the prejudice of some person. The question is whether these slight objections and evils are to be counterbalanced by the great dangers that grow out of this too large a latitude. It seems to me that it were best, instead of shortening the six months to lengthen.

MR. WILLEY. The right of suffrage is one of the most important rights belonging to the citizen; and that fact indicates the necessity of prudence both in the exercise of it and in guarding it against abuse. If you allow too great a liberty, you subject this inviolable right of the citizen to abuse. If you impose too great restrictions on it you do him a damage in a matter very essential, in a matter of high and great right; and it becomes us therefore to be careful that we may steer between the two extremes.

I think the remarks of my friend from Kanawha are not altogether applicable to the motion now before the Convention. They would apply to citizenship, because the voter must be a citizen of the State in which he votes, and he must be in the State a year before he votes, if he comes from another State. Now, sir, that is a sufficiently long time to identify him with the people, to let the judges know who he is, to make all parties acquainted with him, and so to prevent him from perpetrating a fraud on the community where he may reside. But this motion has no reference to that. It refers simply to the clause in the section which has reference to the time the voter shall reside in a county where he removes from another within the State—when he has really been a citizen of the State for a year.

Well, now, sir, no very great hardship can grow out of it in that respect. There can be no pipe laying there; because in general elections where the pipe-laying is done, he can vote in one county, and it matters very little whether he votes in one or another. The local elections in which it becomes a matter material to know whether he is a citizen by having resided a sufficient length of time in the county will never excite interest enough to lead to this abuse and corruption of the election franchise; and therefore it does seem to me that we ought to require simply what is necessary to enable the people where he votes to know that he is a resident there. That can be ascertained, it seems to me in thirty days. He must be a citizen a year in the State. Why, when he moves out of the county of Ohio, twenty-five days or thirty days or two months before an election, into the county of Marshall, and locates there, a citizen of the United States and of the State of West Virginia, having every requirement to make him such,—why should he be deprived of the exercise of the great right of suffrage? All these provisions are ordained and designed to protect the exercise of that right from abuse. It seems to me no abuse can occur from the exercise of this right by moving out of one county into another, when he has been there thirty days.

MR. VAN WINKLE. It may be proper to state the views of the committee in reporting this provision. It will be observed that they have fixed one year as the period for residence in the State; reducing it from two in the old constitution to one. This is perhaps as long as ought to be required and perhaps little enough. It is not of course expected that every person coming into this State is to sit down and take up our law books. That of course is not expected of every man; hardly expected I believe of all the lawyers. But this is expected: that by his intercourse with our citizens he will see how our institutions work, and he will get to understand their operation, if he does not fully understand the principles upon which they were based. It seems to me therefore that some guard in this respect is entirely proper; and I apprehend very few will be inclined to find fault with the term of one year of residence required of a citizen coming from another State. The committee then fixed six months as the proper period to acquire residence in the county.

Now, sir, their view was to prevent frauds which have sometimes been perpetrated by moving a body of men; which may be done for a few days but not for so long a period as six months. It has been done in cities from ward to ward. They would move men from the strong to the weak one, and so carry both wards. That might be done in two counties if it was desirable to do it. It might be done in an election for house of delegates.

Now, then, sir, so far as the committee is concerned, the time is not of so much consequence, although they fixed it at six months, provided the time is long enough to guard against frauds of the character I have indicated. There may be a difference of opinion about it. I think myself thirty days would be too short. I would be willing to compromise on the first motion of my colleague, three months; and I think we should hardly go below that. I do not know what may be the intention of the committee having the matter in charge in fixing the day of the annual elections but when that subject comes up I hope it may be fixed with some reference to whatever time may be fixed here, and to the annual moving day which is fixed by circumstances and cannot very well be changed.

MR. WILLEY. If there is some arrangement in the Constitution by which the voter will not be deprived of the right of suffrage, I would be willing the time should be extended. All I want to provide against is depriving him of that right. Here is a man who has lived in this State and county seventy-five years, he moves across the line and under this rule would be deprived of the right of suffrage. Now if the election can be fixed sufficiently long after the first of April, which is the general time of changing residence, I have no objections.

MR. LAMB. The principal objections I should have to the amendment proposed to this section have already been mentioned. Yet I will mention another one which will have some weight with my mind against conceding the amendment proposed. I am for providing for good government, and for that purpose it is necessary that those who exercise the right of suffrage should exercise it intelligently. How is a man, a perfect stranger to us, who comes into the county of Ohio, or any other county of this Commonwealth thirty days ago, to have such acquaintance with the people of that county who will be proposed to him as candidates for office—with the men who are up before the people for sheriffs—with the men who are up before the people to represent them in the house of delegates or in the senate—how is he to have, coming in thirty days ago, that acquantance with anything that will enable his vote to count, as it ought, in securing the result of that election in favor of the most competent, the most honest and most faithful men who are proposed as candidates? This is, I suppose, one great object to be accomplished with the provision which we fixed in all constitutions requiring a certain residence within the district. The important officers of the government, your legislature for example, to be properly selected must be selected by men who have some familiarity with the people of the county, who will know of the different men who are proposed to them, that one man is likely to prove a competent and faithful public servant, more so than the other. Is a residence of thirty days, a man coming in a perfect stranger, sufficient for this purpose?

MR. VAN WINKLE. He must have been in the State for one year.

MR. LAMB. I know he must have been in the State one year; but this is not the point to which I am addressing my argument. It is necessary, in order that he may act intelligently, that he should have some acquantance with the people of the county—to enable him to say this man will make a good representative in the legislature; that man is a proper man for sheriff; or another for clerk of the court.

I hope, Mr. President, the amendment will not prevail; for I do think it would have an unfortunate effect in securing such a Constitution as would give us a government operating practically for the interests of the people.

MR. BROWN of Kanawha. The gentleman from Monongalia seems to oppose this on principle. He is cautious and careful to guard the citizen in the right of suffrage; and instances the case of an individual who may have grown gray in his country's service, going over the line and asking the privilege of voting, when he has been there but thirty days, and thinks it were a hard case to exclude him from voting. Well now, sir, suppose he had been there just twenty-nine days, would it not be equally hard? How different in the one case from the other? You would exclude him and say you are not to vote in the county of Ohio because you have not shown a residence of thirty days. Now there must be some principle in it. If the principle is to secure that man the right of suffrage, why exclude him under these circumstances? Now if there is any principle in it, and the principle is to secure the man his right of suffrage, he shows he has been a resident of the State seventy-five years, why not give him the right to vote wherever he goes within the limits of the Commonwealth? That is the only way to preserve the principle.

But there is another view, and that is, that you cannot make any general rules without operating to the disadvantage of some persons. The great object is, sir, to secure the citizens of the county of Ohio against the votes of men who may come from adjacent counties to turn the tables on them in their election. The guaranty is to the people of that county that their officers shall not be elected by the people of other counties. Suppose two gentlemen are candidates for say, clerkship, and one wants about fifty votes to secure his election and make it certain, and he just goes over into the adjacent county and says, "You have no contest here; your candidate will be elected certain," and gets them to come over and settle in the county of Ohio for thirty days, and so completely carries the election. I admit such evils are not likely to grow up in an agricultural district, but in cities and towns this evil does occur and it is a real evil. The fact is known, all over the country, in excited times, in populous counties, there will be these deportations to turn the votes against the people who do not want them.

Now, the object is not to deprive a citizen of any vote, but to secure to a large number of people in their own county, the right to choose their own officers and not be interfered with and have their privilege taken from them by the voters of another county who will return as soon as the election is over. That is a high consideration and overrides all the slight inconvenience that might happen to this old gentleman or that old gentleman.

MR. POMEROY. Facts are said to be stubborn things. Why has not this abuse that has been alluded to by my friend over the way been practiced in other States? Who ever heard of the people of Washington county, Pennsylvania, going over into the populous county of Alleghany, where the sheriff's office is worth more than to be President of the United States and controlling the elections, when they could become voters in ten days by so doing? It is a certain fact, known to all persons conversant with that State, that what I say is true, that in point of profit, the office is worth more than the office of President of the United States. But when—in what year—at what particular time in the history of this country has it ever been shed abroad on the page of its history—that there was corruption there in the election of its sheriff or other officers. If a man was running for sheriff in the county would there not be a man running the very same day in the counties of Brooke and Marshall? And would not the candidates want all their friends at home? When my friend (Mr. Caldwell) is a candidate there, he wants his friends there to vote for himself, and not taken off into some other county.

I am not tenacious at all as to the time of thirty days; I would willingly agree to three months; but, sir, in my conversation with the members they appear to be satisfied with the present time of voting, the fourth Thursday of May, and as the great portion of the people who change their residence do so on the first of April, if we say either six months or three months, each is alike fatal to them in regard to the exercise of this great right of suffrage.

One word as it regards the argument of the gentleman from Ohio. I respect him in anything he may say, but I ask him if he thinks we in Hancock county do not know as much of his qualification for office as the voters of Ohio? Does he imagine we never heard of his name; that if we were to come down here and live thirty days, we would not know he was a suitable man to elect to a body of this kind? Certainly we would. Certainly the gentleman cannot maintain there is much argument in that.

These voters do not move here for the mere purpose of controlling the elections. They become citizens. They become citizens, and move their families here. Would a man do that for the mere purpose of controlling the election of some officer. Have we that kind of people in this new State? That they would come up into Ohio county to vote for officers and then go back, at great expense to themselves or the candidate, and leave their own men whom they would have no hand in electing? Certainly not. I admit all the gentleman from Kanawha says about corruption in general elections; but we provide for that by saying that a man must be a citizen of the Commonwealth for a year. But if he votes within the State it is no matter where he votes, at a general election of that kind, voting for a governor, voting for any State officer or for President of the United States. Then it is true that there would be any corruption at these local elections? I contend there would not. We have no evidence now that the times of general elections will be changed and therefore if the people continue to follow that custom which they appear to have followed from the beginning of time to the present, of moving at the first of April, why then if you make it three months they are not entitled to the right of suffrage for over a year.

I am in favor of making liberal provisions here, so that we will say to the oppressed and down-trodden of every land; you will find liberal principles here; a people who do not ask you to be subject to, yet have no hand in making the law; who do not say to you, you may pay your taxes but even in regard to the man you are to pay them to and those who shall have the disbursement of the funds you shall have no voice whatever.

Therefore, I am in favor of saying thirty days. If the election would be changed and three months from the first of April would come before the election, then I would not be tenacious about that. But there is no evidence that it will be changed. I think we ought to say thirty days.

MR. STEVENSON of Wood. I do not wish to detain the Convention but a few moments. I would only say, sir, that I am just as anxious as any man in this Convention can be to preserve the purity of the ballot box. I expect we will have one; at least I hope so. (Laughter.) I mean the right of suffrage. But I must be allowed to say, sir, that the ideas which our friends have advanced here in reference to this migration of voters from one county and district to another are mere chimeras, I think, of their own imagining. I believe in most of the State constitutions made within the last fifteen years, the time allowed for residence in a district before voting is less than thirty days. And I venture the assertion here, that there is as little corruption in political parties in those States, as in States where the time is six months; and you may take old Virginia, if you please, as an example.

Now, my friends may rest assured that it works differently from what they apprehend. It purifies the ballot box, or the right of suffrage. The gentleman from Ohio has introduced an argument of this kind, that a person moving from one district or county to another is not qualified within thirty days to judge of the capabilities of persons presenting themselves for office. Well now that is very true of some persons; but if you would make the limit ten years the same one would not know much more about it (Laughter). Some will acquire this knowledge in five or ten days, and some will not acquire it in half a century. I think a man living within the State for one year or longer, being conversant with the political workings of the State, the organization of parties, the duties of the office, will be qualified, in a majority of cases at least, in moving from one county to another to exercise his judgment on that matter just as well in thirty days as in six months.

In regard to the remarks of the gentleman from Kanawha respecting the introduction of voters from other states, that has been replied to. I agree with the report of the committee in reference to the time one year, for a residence in the State. I think that is short enough. But after men become residents of the State, having made their homes here, having invested in property and identified their interests with ours, it does seem to me the mere moving out of one county into another is not a sufficient reason for defranchising them for six months, while they have the same interest in that county in every respect that any other inhabitant of it has.

Sir, if there was one argument that was better than all others in advocacy of this it is this fact, that it has worked well whereever it has been tried. I know there is corruption in elections. Every person knows that. But if you make the time one year it seems to me this is just as likely to happen, as if you make it ten days. The instances are very rare, as gentlemen have said here, where the officers are such as will justify the importation of men from other counties to reside for thirty days within a district; and if the temptations are sufficiently strong, the fact is proved that the thing does not occur at least very frequently.

I have one word in regard to the proposition of my colleague from the county of Wood in reference to a compromise; I do not know but I might have favored that; but the vote on the name of State has given me a kind of antipathy to compromises, as the project of my friend was defeated; so I think I will let the thirty days proposition come upon its own merits.

MR. O'BRIEN. I move an adjournment.

The motion was not agreed to.

MR. WILLEY. We are just ready to vote. Let us vote.

THE PRESIDENT *pro tempore* (Mr. Caldwell in the Chair). The question is on the motion of the gentleman from Wood to strike out "six months" and insert "thirty days".

The motion was agreed to.

MR. O'BRIEN. I now move to adjourn.

MR. VAN WINKLE. Let us pass this section. There are no other amendments.

MR. STEVENSON of Wood. I would like to make another amendment. However, if there is a disposition to adjourn, I will not press it.

MR. O'BRIEN. Then I renew my motion to adjourn.

The motion was agreed to, and the Convention adjourned.

VII. WEDNESDAY, DECEMBER 4, 1861.

Prayer by Rev. Gideon Martin of the M. E. Church.

Journal read and approved.

MR. STEVENSON of Wood. Before the special order which was set apart for this morning, I would like to offer a resolution in reference to a standing hour of adjournment for the morning session.

THE PRESIDENT. The Chair understands the order is not printed and there will be some time for business before it is called up.

MR. STEVENSON of Wood then offered the following:

"RESOLVED, That hereafter the standing hour of adjournment shall be at half past 12 o'clock until otherwise ordered."

MR. STEVENSON of Wood. My reason for offering that is this: After this time I think we are likely to have a good deal of discussion, and it will prevent interference with the proceedings by motions to adjourn by having an hour set apart for that purpose. If the Convention see fit to adjourn before that, it can be done on a motion; but to extend the time, it can only be done by general consent.

MR. BROWN of Kanawha. There are several members of this body who are members of the legislature and that body has fixed the hour for their sittings at 2 o'clock for the very purpose of accommodating those who are members of this body. The arrangement would defeat that very object. It is desirable that we should make our sittings so that we can all attend as far as possible.

MR. STEVENSON of Wood. At the suggestion of the gentleman from Ohio I will alter the phraseology of the resolution so as to read:

"RESOLVED, That hereafter the Convention will take a recess from half-past twelve o'clock until half-past two o'clock P. M."

MR. BROWN of Kanawha. Mr. President, I will amend that proposition by insteading ten o'clock instead of the present hour of meeting so as to give more time in the forenoon.

THE PRESIDENT. The proposition now before the house is half-past twelve o'clock till half-past two. What is the amendment?

MR. BROWN of Kanawha. My amendment is that the hour of meeting shall be ten o'clock instead of the present hour.

THE PRESDENT. The proposition now before the house is not to appoint an hour of meeting but the hour of recess and meeting after recess.

MR. STEVENSON of Wood. The gentleman from Kanawha can accomplish this object by a separate resolution after this is done.

MR. LAMB. I doubt, Mr. President, whether the proposition to meet early would expedite the business. It would cut off the possibility of the committees acting effectively in the morning session. The present hour allows the committees to meet and remain in session two or three hours. They can meet in the evening adjournment, and they have time allowed them in the morning to consider the subjects before them.

MR. BROWN of Kanawha. It would be a proper time of meeting at nine in the morning and let the committees meet in the afternoon. My whole object is to so arrange the sittings of the two bodies that members who are members of both can attend to the duties of both.

THE PRESIDENT. The hour for meeting in the morning has been provided for by a resolution passed some days ago. Your object would be to amend that resolution so as to change it?

MR. BROWN of Kanawha. If we could meet at nine I do not think there would be any necessity to meet in the afternoon because that time could be appropriated to the action of the committees.

MR. CALDWELL. I think, sir, the hour of meeting in the morning in order to give an opportunity to the committees to meet previous to the session is better than the time suggested by the gentleman from Kanawha, and for this reason: the object is to expedite business and if the committees meet in the morning and be enabled to make a report at eleven o'clock during the morning sssion, that report can be laid on the table and be printed so that it may be taken up and acted on the succeeding day; while if they do not meet until afternoon it would defer the business until another succeeding day. I think generally the opportunity is given for the committees to act in the morning and let them lay their action before the Convention, so that in case of urgency or necessity the action of the committee is before the Convention sooner than in the other case it could be had. I am satisfied the present arrangement, meeting at eleven o'clock, with the sessions of the committees in the morning, is better than any yet suggested. I will oppose, sir, any change.

MR. BROWN of Kanawha. I would suggest to the gentleman this consideration; whether instead of meeting in the afternoon at all, it would not be better to meet earlier in the morning and appropriate all the afternoon to the committees. Then the legislature could sit in the afternoon and give the morning to its committees. There is no small inconvenience in our meeting in the forenoon, adjourning to dinner and then meeting again. I think we can accomplish more by one session a day and the balance appropriated to the committees, as by meeting here, going to dinner and then coming back again. My object is not at all to delay the body or accommodate myself only to have the action of the body adopted as far as possible to that of another. That would avoid the difficulty suggested by the gentleman and I think accomplish everything I propose to attain.

MR. STUART of Doddridge. It does seem to me, sir, the motion looks to an excessive labor on the part of the members of this body. This thing of meeting in committee in the morning, assembling here at eleven, running home to get your dinner, and assembling here again is, I think, most excessively laborious. I would move by saying a recess to be taken until half-past three. I think we are poorly qualified to come in here immediately after our dinners. It does not suit myself; I do not know how it is with the rest. But that will accommodate some members who belong to the legislature. I understand they have made their sessions to commence at two o'clock to accommodate certain members of this body. Now certainly we should have the courtesy to extend the same indulgence to their members who compose a part of this body. Now, sir, I presume an hour and a half of a session will accommodate the members of this body who are members of that for some time to come. That would be imposing great labor, it is true, but we are willing to endure it.

I suggest, sir, the gentleman's motion be amended, to take a recess until half after three.

The amendment was adopted, as was the amended resolution.

MR. LAMB. Mr. President, I move the postponement of the order, which is the report of the Committee on Boundary, until the afternoon session, with the hope that we will then have the document before us, as it has not been returned printed.

The motion was agreed to.

MR. DILLE offered the following proposition:

COUNTY ORGANIZATION

"1. The counties of this State shall be divided into townships as nearly equal in territory, and in the number of electors qualified to vote for members of the legislature, resident therein, in each of which shall be elected by the voters therein on justices of the peace, an overseer of the poor, one surveyor of roads, and one constable, who shall reside in the township during their term of office, and continue in office for two years, provided no county shall contain less than nor more than townships.

"2. There shall be elected for each county, by the qualified voters residing therein a register, sheriff, surveyor, and county commissioner, who shall, at the time of their election, reside in the county, and during their term of office shall not remove therefrom, and shall hold their offices as follows: The registrar for the term of six years; the sheriff for the term of four years, and shall not be re-eligible until the expiration of a full term after that for which he was elected; the county surveyor for the term of four years; and the commissioner of the revenue for the term of two years.

"3. The justices of the peace of the respective townships of each county, shall meet at the court house of their county, on the first Monday in June of each year, to audit and settle all claims against the county, lay the county levy, and transact such other county business as shall be authorized by law, and the register of the county shall keep a record of the proceedings of the said justices of the peace.

"4. Justices of the peace shall hear and determine all matters in assumpsit, debt, detinue and trover against all persons residing in their respective townships, wherein the demand, or subject in controversy, exclusive of interest, shall not exceed in value dollars. They shall exercise all such criminal jurisdiction against all persons residing within the county as may from time to time be required by them by law, or authorized by this Constitution.

"4. The jurisdiction, duties and compensation of the register, sheriff, surveyor, commissioner of the revenue, justices of the peace, overseers of the poor, surveyor of roads, and constables, except so far as the same is conferred by this Constitution, shall be regulated by law.

"5. Each of the officers mentioned in the first and second sections of this article, shall continue in office until their successors shall have been qualified.

"6. Vacancies occurring by death, resignation, removal or otherwise, in any of the offices mentioned in this article, shall be filled by elections held by the voters of the county or townships in such manner as shall be prescribed by law.

"7. The offices of coroner and escheater in the several counties, shall devolve upon one of the justices of the peace, who shall be elected by the votes of a majority of the votes of the justices of the peace of the county, at their June meeting in each year, under such rules and regulations, with such powers and compensation as shall be prescribed by law.

"8. The circuit court of each county of this State, at its first session after this Constitution shall go into operation, shall appoint three discreet commissioners, (one of whom shall be the surveyor of the county) whose duty it shall be, to divide the county into townships and number the same, under the first section of this article, and return a plot of such division to the register, to be by him recorded. Until such divisions shall have been made, the existing divisions shall be the townships of the county."

MR. O'BRIEN, the following:

"There shall be established in every county a court to be called the county court, for which a presiding officer shall be elected, who shall be called a county judge. His qualifications shall be the same as that of a lawyer admitted to practice law in the circuit court. He shall have appellate jurisdiction and shall try all cases, whether civil or criminal, that may arise in his court. He shall have monthly courts, four of which shall be grand jury courts; at each of which he shall show plainly to the jury the law, and point out their duty. He shall hold his office for four years, and receive a salary prescribed by law. He may be indicted and tried for malfeasance, misfeasance or gross neglect of official duty, in the circuit court. His punishment and penalties shall be prescribed by law."

MR. BROWN of Preston, the following:

"RESOLVED, That the Committee on the Legislative Department inquire into the expediency of requiring the legislature to provide by general laws, for the creation of corporations, within the State."

MR. SOPER, the following:

"RESOLVED, That it be referred to the Committee on the Judiciary, to inquire into the expediency of electing a county or probate judge in each of the counties of this State, with jurisdiction in cases for the proof of wills, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians—in cases from justices' courts—in criminal cases of less degree than felony, and in such other matters of law and equity, as the legislature might deem safe, convenient and cheap to the parties interested. The judge to be paid out of the county treasury, by a salary, or by fees paid by the parties, or by both salary and fees."

MR. POMEROY. I move we proceed with the consideration of the section before us when we adjourned last night. The vote has not yet been taken on it, but on the amendments offered.

MR. VAN WINKLE. I would move that we take up the report of the Committee on Fundamental Provisions.

MR. POMEROY. I will accept the suggestion.

The motion to take up was agreed to.

MR. LAMB. Mr. President, I move the adoption of the sixth section.

MR. DILLE. I desire to submit an addition to the sixth section, or an amendment rather. It is in the shape of an addition. I move to amend by striking out all after the word "offer" in the seventh line, and inserting the following: "or who has not within two years paid a State or county tax, which shall have been assessed at least thirty days before the election, shall enjoy the right of an elector, provided, that white freemen, citizens of the United States, between the ages of 21 and 22, and having resided in the State one year and in the county thirty days, shall be entitled to vote, although they shall not have paid taxes.

This proposition, I think is an important one taking into consideration the action of the Convention upon yesterday, giving, as I thought, a very extended suffrage. I think, really, that parties who desire to wield the elective franchise should manifest some degree of interest in the affairs of their county and State; and I think no better way can be found, at least in these times, to manifest that interest than in the way of paying their taxes.

MR. VAN WINKLE. I should like the resolution to be reported from the clerk's table.

The Secretary reported it.

MR. VAN WINKLE. There are so many limitations and provisions about a simple proposition. I am not sure I understand it distinctly; but I move to amend that by inserting before the words "before the election" the words "and done one day's work on the public roads."

Now, sir, if the right of suffrage in this new State is to be bought and sold for money, I think working on the roads is much more meritorious. As I understand it, sir, we are in want of good roads, throughout this part of the Commonwealth, as it is now. It is very desirable that we should have them, and if these things are to buy the right of suffrage, I propose we barter it for good roads rather than enabling the sheriffs to do their duty. I think, sir, if we do consider the right of suffrage anything it is a great right, and one that is not to be bought nor sold for money nor for services. It involves a principle that lies at the very foundation of all government. But by the terms of this amendment, citizenship is circumscribed by the non-payment of twelve and a half cents taxes, and unless he has paid it that man who is a citizen and has the same rights in a community as the one who has paid it is denied the exercise of the franchise. Now, as for the payment of a petty tax being an evidence of attachment to the State, or of a capacity to know how to vote, or that he will exercise the right of suffrage with judgment and discretion, I am utterly unable to see it, and I am opposed and always have been and always shall be, to connect with the exercise of any of these sacred rights—any of these fundamental rights lying at the very foundation of every political community—and such two-penny consideration as whether he has paid a tax or not. It belittles it; it degrades the right of suffrage.

Sir, if the sheriffs do not do their duty, let the legislature see to it, and impose proper penalties upon the sheriff. Let them make him accountable himself for the tax and I warrant there is no need of this provision.

I remember how it was in old times when I believe the tax was twelve and one half cents. The sheriffs never attempted to collect it at all. He came to the polls and he actually did make use of the exercise of this right as the means of collecting this petty tax.

And, sir, if we are to withhold the right of suffrage for every petty occasion, I say that working the roads is much more important. There is a great deal more difficulty in getting people to turn out to work the roads than in getting them to pay taxes. You have not the same means or compulsion as for the tax. You can seize their property, but for working the roads it seems you cannot get it done.

Now, sir, I of course do not mean that this amendment of mine ought to be adopted. But this is just as worthy as that.

Sir, I would not disfranchise any man except for grave crimes and misdemeanors, and the only thing that does disfranchise a man is being under conviction of felony or treason. And the gentleman wants to put the non-payment of a petty tax on the same footing! Another thing that forever disqualifies a man as reported here, is that he shall have been proved guilty of bribery in an election. And the gentleman wants to put this in competition with such a grave crime! He wants to put the citizen who is perhaps unable to pay his tax in the same situation precisely as the report puts the man convicted of felony or guilty of bribery in an election. The next thing, sir, we will begin to discriminate and we will get back to the "fleshpots." We will have it, sir, that a man who does not pay taxes shall not be represented. And then we will easily—very easily—get back to the old basis of taxation as the foundation of representation. Why, sir, do you know how much a man was worth under the old Constitution? Not so much as a negro, sir. In the year '50, according to the lists of that year, five hundred and thirty-two dollars of property was the basis of representation; that is to say that there were as many votes cast for five hundred and thirty-two dollars' worth of property as there were for individuals, or the tax on that amount of property had as much weight in this community as a white man. Now, sir, that is where we are coming back to, when we attempt to use this right of suffrage as an instrument for anything except withholding it from those who have committed grave crimes. We are treating that right as though it were one of the smallest provisions ever passed by simple act of a legislature. Why, sir, you do not punish a misdemeanor anything less than a felony with disfranchisement; and yet for the non-payment of a tax of twelve and one-half cents you are about to inflict, so far as the Constitution is concerned, the same punishment as you do for felony, or bribery in an election, or treason. The whole thing to my mind is preposterous. Where is the necessity for it? What evidence is there if he pays his taxes that he is any more fit to vote than if he does not? I can see nothing that ought to weigh with this Convention one moment. We are met here, sir, I think, for the purpose of making a change in the institutions of this State —for the purpose of extending what has never yet been extended entirely through this State, the principle that the citizens of the State are the State. The government is not the State; the people are the State; and, sir, if a man who is a component part of the State is entitled by that principle to this right of suffrage and representation, I would ask whether you do not belittle these great rights—whether you do not diminish their importance—whether you do not degrade them, as it were in the estimation of everybody when you to make their honest exercise to be tested by the small question of whether a man has paid a two-penny tax. I ask the Convention to consider this as a matter of principle. It may be a very convenient way to force people to pay taxes, and it might be convenient to force many other things by denying man his great rights under the Constitution; but how would it look in the eyes of the world? Would it be said we were making progress in free government, extending the application of those principles our ancestors have left us? No, sir, it would be said we were going backwards, retrograding, taking the back track entirely. Let me tell you what existed once in this State. Under the old constitution, sir, (and even under this one we are about to make, if this clause is inserted) this anomalous state of things would arise; here is a gentleman, it might be myself who not having paid his twelve and a half cents of tax is disfranchised; and yet, sir, that very man under the Constitution of the United States is entirely competent to be a representative in Congress. Aye, sir; and that thing existed constantly under the old Constitution. There were men there who were not allowed the right of voting at all, and yet every one of them had all the qualifications to make them competent as representatives in the House of Representatives of the United States. Now how does it sound? Take that United States Constitution made with more care, more care than any that have been made since—when principles were everything—when we had just come out of that War of Independence, in which we fought for principle—take it from end to end and adopt your Constitution to that, and I will venture to say you will not go astray in a single particular.

Yes, sir, a representative in the Congress of the United States requires no other qualification but a certain age and residence for citizenship; and yet, sir, a man who is declared by the Constitution of the United States competent to represent a district of your State in that body is not to be allowed to vote in the State of West Virginia for our own officers. Now, sir, it is preposterous; and I trust this Convention will show by their votes on this occasion that they have a much higher regard for principle than for enabling sheriffs to collect their taxes. That is all it means—to enable sheriffs to collect their taxes; and if they do their duty the taxes will be collected anyhow. I would have no objection, if it is worth while to say that a man should be assessed for taxes; but we know under the laws every man will be. But because if a man is assessed for taxes, and from some unforseen circumstance—it may be misfortune of some kind—bad crops—or on some other account—is unable to pay his tax, because he is not able to pay a small sum, this great right of suffrage—this great right of voting for the representatives of his choice, is to be denied him. Sir, just take the Crown tax, the smallest that is laid here, say one dollar if you please, just raising it seven hundred percent from twelve and a half cents, and then we have got the value of the right of suffrage in the new State. Now, is not this so? If you say a man shall not exercise the right of suffrage without having paid one dollar, you certainly fix that as the price of suffrage.

Now, sir, I make these remarks to show that there is a principle in this thing; and that it ought not to be tampered with except on the gravest consideration. If you propose a perpetual disfranchisement of a citizen, it might be done in punishment of crime if you choose. It might be a man convicted of felony should be forever deprived of his right but he could not be so far as that. If a man is, as it were, abandoned by the crime let him be deprived, but for nothing else except for some disability of Providence. A deaf or insane person should not, of course, be allowed to vote. A pauper is also deprived because he is in a dependent position; but a pauper does not mean in that sense a poor person, but one that is in the actual care of the overseers of the poor.

I hope that you gentlemen will consider that this is a question of principle and vote accordingly.

MR. STUART of Doddridge. Mr. President—

MR. VAN WINKLE. I withdraw my amendment, sir.

MR. STUART of Doddridge. I would like to insert another condition that those so deprived of a vote should not be required to bear arms to defend their country. If this amendment prevails, sir, it will operate against that class of our community, of all others the most entitled to our sympathy. It is true, sir, there may be persons who refuse to pay their tax who should do it; but if you make this condition they will always do it while you will deprive the poor men who really cannot pay his tax of the exercise of that right—the man who has a family to support and really is unable to pay his taxes. I have heard this thing prated before, that a man who did not pay his revenue ought not to be permitted to vote. The persons who were disposed to do a thing of this kind—and I have seen it done often—would just go around and find out who had not paid their revenue, and when they would come to the polls he would be there with money in his pockets and he would tell them, I will pay your taxes and you vote as I want you to. I do not want to insert anything in this Constitution that will hold out such inducements of this kind. I want every man of sound mind and competent age and residence to have the right of suffrage.

MR. CALDWELL. I am free to say, sir, I felt disposed to favor the amendment of the gentleman from Preston, chiefly, however, on this ground. And I believe my friend from Wood will remember that the times now are not as they were in the formation of the present Constitution of Virginia. They are troublesome times upon us, sir; there is rebellion in our midst, sir; we have rebels all over this land, not confined to the city of Wheeling or the county which I have the honor in part to represent, but, sir, spread all over all the counties proposed to be organized into this new State. Now, sir, I say, sir, that I was inclined to further this amendment for this simple reason; that these rebels in our midst, without a provision of this kind have the privilege of coming up to the polls and voting for the officers in the organization of this government with just the same liberty and freedom that the best Union men in the State would have. I am inclined to favor the amendment, sir, for the reason that I do not wish to see a rebel cast his vote in this government unless he gives some assurance that he is willing to give it a support; and I think will be best tested by requiring him to pay his tax.

MR. VAN WINKLE. Will the gentleman allow me to call his attention to the tenth section, where it is provided that "every citizen of this State may in time of war, insurrection or danger be required by law to make the like oath or affirmation"—that is "that he will support the Constitution of the United State and the Constitution of this State—upon pain of suspension of his right of voting and holding office under this Constitution?" Now, sir, there is a case where the penalty should be very properly inflicted; not for the non-payment of one dollar.

MR. CALDWELL. I had thought, sir, of offering an amendment to restrict the right of suffrage to Union men, that is to say, sir, to go so far as my friend from Cabell, that no one in actual rebellion—no one charged with treason—should have the right of suffrage. And it is, sir, for this reason. Now, sir, in my own county—in several counties that I think I could name—where the secession element prevails, what will be the result in the formation of the new State in those counties. Why, sir, where that element prevails, the secessionists will over-ride the Union party. They may go to the polls—and will undoubtedly—and elect officers, while the result will be that those persons so elected will refuse to qualify; and thus the organization in those counties will be defeated. Now, sir, I am satisfied and I fear very much, that in several counties of this State that will be the result, and therefore, I say, it was that I favored the proposition of the gentleman from Cabell.

But, sir, if it can be reached under this tenth section by requiring every citizen to take this oath—because I am satisfied that although many of us have got tired of this oath being administered to us so frequently, but still I have some confidence in Virginians, and I would be satisfied if the citizens of this State—those who are to compose the State of West Virginia shall be required under this tenth section to take the oath of allegiance to that State, for then my object would be attained.

I am free to say, sir, that I do not wish a poor man to be deprived of the right of suffrage; although I have seen it from year to year, at every election, in my county, that those who do not pay their taxes, who are at the defiance of the sheriff are more noisy and give more "to-do", sir, on election day than any others. I discover, sir, they are the class of people who assemble at the different places previous to the day of election, and on the day of election, sir, they are there in their "sovereign" capacity with the same right of a quiet and peacable man who pays his taxes—who come up to the polls and vote under the privilege given them, yet are at the same time at the defiance of the sheriff. I do not understand this provision is at all intended to enable the sheriff to collect his taxes; but, sir, it would require these individuals who seem to take as much interest in the elective franchise as other parties, to say to them, you must show some attachment to your Constitution and to your laws by doing what others have done, that is to say, the payment of taxes.

Now, sir, men with money in their pockets but with no visible property—how is the sheriff to get at them and require them to pay? If they have nothing the sheriff can levy upon, what taxes can be made? They are at the defiance of the sheriff. It is for this, sir, that I think it just every voter should be required to pay his taxes previous to having the privilege of exercising the right of suffrage; and my main object was to keep out this secession party now in our country. If it is to be reached in the tenth section I will be content.

MR. BROWN of Kanawha. I wish to make one remark before the question is submitted. I understand, sir, that our rights are not given us by the Constitution, but that our rights as citizens exist under the law of nature; that the simple fact of being residents in the community, assembled for a common purpose as a state for his protection secures to a man the right of suffrage; and that the Constitution properly is only a limitation on that right; that I do not derive the right from the Constitution but the Constitution derives its obligation from me; and that the power of the many in the Constitution may restrict the rights of the few for the general good. And, sir, adopting that fundamental principle, the question then arises how far will you undertake to restrain and take from the individual the rights which they have been irrespective of that Constitution and above it, without a sufficient reason? The question then comes up here in that limitation proposed in this Constitution upon the citizens right to exercise that fundamental element of free government, whether the reasons offered are sufficient in this case to justify us in this Constitution to restrain our fellow-citizens who may be in the category supposed. If there is any reason for taking away the right of suffrage from an individual simply because he has failed or was unable to pay his revenue he may be assessed with, for the time being, or proscribe him for that simple delinquency, why not other or greater delinquency be also sufficient? Why, as it seems to me, it enters at once into the inquiry of what delinquencies a man is guilty of, and whether they are not such as ought to deprive him of the right, and that this must be a question on the day of election before he shall exercise it, whether he is entitled to or not under the law. Your Government is for controlling the citizens and requiring or compelling him to discharge the duties of the citizen as prescribed by the laws; and your officers are paid for making them perform that duty. The sheriff's duty is to collect the revenues, and if he attends to his duty, the citizen will do his; but if the sheriff fails to do his duty it is wrong to deprive the citizen of his right because of the failure. It may be said that there are some instances in which the sheriff cannot accomplish the end. Well, sir, there will be failures in every government instituted by human beings; from the very law of our nature there will be delinquencies; and therefore it is not right that you shall strike out one of the fundamental rights on which the whole institution of government rests.

Treating this, then, sir, as a question of principle, I find myself constrained to vote against the amendment. But there are reasons of policy that would induce us to vote it down. While I admit that there are evils arising from the fact that a large number of people in any community will be non-taxpayers although properly assessed, and that they will go up and exercise the right of suffrage, and that this is an element that may be improperly used in the community—yet the question is whether you do not increase the evil by depriving them of it.

Now, sir, admit that the payment of tax is to be the condition of voting—and this will be the case if this amendment is made—and a hundred individuals come to the polls, and it is ascertained by some candidate that a hundred votes will be necessary to secure his election, and he is a man of more than ordinary means and these men are from the very circumstance of their being unable to pay their tax, poor men, and whose morals by the hypothesis are so very loose that you are now willing to exclude them—for this is to be the code of their morals, that they are unable to pay—that the poor man is so corrupt in his morals that he will prostitute the vote and therefore should be excluded—do you not see that the wealthy candidate if he chance to be an unscrupulous man will pay these men's taxes if they will vote for him, and thus in reality buy their votes for the amount of their taxes? It is true you have saved the sheriff the trouble of collecting the taxes, but it is prostituting the franchise of an elective officer. We have seen this thing under the old order of things when it was requisite the voter should have been assessed and have paid his tax before voting; a large number had their taxes paid on the day of election by the friends of the candidates who did not stand on a few dollars to secure an election. Well now, sir, when you adopt the same rule the same evil will follow; for we are no better than we were then. I think therefore while the object of this amendment is to purify the ballot box or right of suffrage, it fails to accomplish that end and while it violates a great principle; and failing in both, it is the more proper we should vote it down.

MR. WILLEY. The third section of this report, already adopted declares that "the powers of government reside in all the citizens of the State, and can be rightfully exercised on in accordance with their will and appointment."

Whilst I appreciate fully the purpose contemplated in this amendment I am upon reflection forced to think if the restriction is an injury on the fundamental rights of the citizen, it is in conflict virtually if not strictly with this fundamental principle which we have already recognized and adopted. Now, sir, it seems to me the act of a default in payment of taxes is predicated upon the fact that he is absolutely unable to pay them. The sheriff may properly say, we return delinquent only when in point of fact he is unable to pay his taxes; nevertheless, sir, he may be subject to the requisitions of the Government; he will be required to work on the roads; he will be required to carry arms; he will be required to defend with his life and person and property the existence and interests of the government under which he lives, which perhaps is the highest duty that devolves on the citizen. Every man acknowledges the obligation. The brave boys who are now standing up for their rights in the Union are in the majority of instances composed of that class of our population which would be made subjects of this restriction if the amendment should be adopted. I cannot conceive that there is any necessary or logical connection between the payment of taxes and the exercise of this fundamental right; and it seems to me there should be a fundamental change in the exercise of it before citizens should be thus deprived. Now the mere inability to pay taxes—for that is what is contemplated, nothing more—is not an objection, a sufficient objection, to prevent the exercise of this great primary fundamental right, lying as the very foundation stone of free and republican institutions.

MR. DILLE. In presenting this proposition or amendment, to the Convention, I had no idea that I was violating any fundamental principle of government, or any provision that has been passed upon by this Convention previous to this time. The third section to which the gentleman has just referred, that the power of the government resided in all the citizens of the State, has already as I understand it been violated by the provision before us as it now stands. Because, according to this section there are several classes of persons excluded already from the right of suffrage, and in violation of the provisions found in the third section. A party convicted of treason against his government is deprived of it. Why? Because he has committed an act against his government that renders him unworthy of exercising this invaluable right. A party who is convicted of a felony, is deprived of it; and yet he remains a citizen of the State. A party who has been convicted of bribery in an election continues a citizen of the State; and yet for reasons, and for sound and logical reasons, he is deprived of the right of wielding the elective franchise.

And I hold further than this that there ought to be other restrictions in addition to these. I might go further and say the citizen who has not resided within the State for twelve months and in the county, according to our amendment, one month, he is deprived of the right of voting. Now I hold that we ought to go further upon this point and that we ought to deprive a man from voting who contributes nothing in material support for the government. Governments are instituted by us not only for the protection of our property, but our lives and everything we hold dear; and to keep up these governments it requires money. Without it we cannot have a successful government. Now I hold that the man who does not make his arrangements in such way as to be able to contribute something towards the support of that State, or that county, government that gives him everything he holds dear—if he makes no arrangement whatever to contribute a small amount, whatever, it may be, towards the support of that government, I hold that he is not of that class of citizens in our midst that ought to wield the elective franchise, and dispose of my rights and dispose of my labors and my property. I hold that it is a violation of a fundamental principle, an indispensable principle, in government. Why, how does it work out? Suppose that one fourth of the legal voters of each county refuse to pay their taxes; although they may have the dollars in their pockets, although they may have money at their command; yet from causes which may arise, as for instance, a rebellion, they may refuse to contribute one dollar from their funds to support a provisional government or any government that may be instituted for the protection of the loyal citizens, and say, I am at your defiance—I have the money in my pocket—I have the means wherewith I could pay that—yet, I am unwilling to contribute towards the support of that government. What is the effect? Why, here in each county you may find five hundred men against whom taxes have been assessed who have the money in their pockets to pay these taxes, and yet refuse to pay one dollar.

Upon the matter in regard to those who may be engaged in the service of the United States, who may be fighting the battles of our country, I have one word to say. I feel as kindly towards them, as warmly and as deeply interested in their welfare as any gentleman in this Convention, and I will do as much for them and contribute as much as any other man, yet I am unwilling that they should control my life, my liberty, my property, when they contribute nothing towards the means of keeping up county expenses or State expenses.

Now so far as the matter in regard to the sheriff is concerned, I care nothing about that. I care nothing. I offer not this proposition because I wish to aid the sheriffs in collecting the revenues of their county. They have a duty to discharge. They discharge that duty as faithfully as they can and as they are required by law to discharge it. But I hold that so far as that is concerned—so far as this proposition is concerned, it is not for the purpose of aiding them; but it is to reach a class of men that cannot be reached through any powers that can be conferred upon a sheriff.

Now I do not say in my proposition at all that they must pay five dollars or that they must pay ten dollars; but they must pay something into the county treasury towards paying some portion of the county expense, or they shall pay something into the State treasury by which they shall bear a proportion of the State taxes. I do not look at them as paupers. I do not look upon them as men who are unable to pay; because I hold that any able-bodied man in the State of Virginia, who is not a pauper, can by industry and proper application to his business contribute something towards the support of his government.

Mr. President, I feel somewhat deeply interested in this proposition. I have been traveling over the hills of West Virginia for several years. I have noticed the delinquent lists in the different counties during probably fifteen or eighteen years; and I have been acquainted with a great many of those individuals who have been turned delinquent; and I know a great many of them that yet have the dimes at any time to go to a tavern upon an election day and treat to bring about a certain result desired in the election. They have money to do that, but they are delinquent so far as the State and county treasury is concerned. And I wish to check this thing. I wish to bring about a different state of things. I wish not that I may aid the sheriffs; I wish not to deprive any poor man but I wish to deprive that class of men from voting who manifest no attachment to or interest in their government and hence I have introduced this proposition.

MR. HAYMOND. Mr. President, I understand the gentleman from Marshall to say that those who are in rebellion should not have a vote unless they paid so much tax before the election. To obviate the necessity of the objection of the gentleman, I would ask him if it would not be better to make them all Union men before they have the right to vote?

Sir, it has ever been my opinion, and is at this time, that no man should have a vote in this government unless he is willing to follow the flag of his country; that flag, sir, that waves over you in this house.

Sir, it is the same flag with which your Washington led your armies through the Revolutionary War, and fought and won the liberties of this country; and, sir, it is the same flag—the same stars and stripes under which your Scott, the great captain of the world, led your armies to Lundy's Lane, and there fought and conquered the British lion on his own soil; it is the same flag with which your Taylor led his noble little band of soldiers to Buena Vista, and there fought and conquered Santa Anna with his legions; and, sir, it is also the same flag that your Scott planted on the Capitol of the Mexican empire, and by the gods, it is the same flag—the same stars and stripes under which your McClellan and Kelley shall march your armies to Richmond, and there immortalize themselves by pulling down the rattlesnake flag from the Capitol of the Old Dominion, and plant there the glorious stars and stripes. Sir, when that day comes I would like to be by their sides; it will be a day of the downfall of would-be tyrants; and the rising of civil liberty on high to bid defiance to the world.

Sir, my country is on fire—our America is on fire, from the blaze of cannon. May the last torch-lighter be speedily laid in the ditch.

Gentlemen, I am opposed to the amendment.

MR. DERING. I would ask that the amendment be reported again so that I may vote understandingly.

The Secretary reported it.

MR. BRUMFIELD. I call for the yeas and nays.
They were ordered.

MR. BROWN of Kanawha. I desire to offer an amendment to the amendment. It says "the citizens" shall vote. In language affecting any voting in State elections, it seems to me we ought to be providing for the citizens of the State. It is true we have provided in the fourth section that citizens of the State are citizens of the United States; but in providing now in a section for the voting in a State election, it seems to me that it should be "citizens of the State" voting.

MR. DILLE. Yes, sir; I accept the amendment.

The vote was then taken and resulted.

YEAS—Messrs. John Hall (President), Brown of Preston, Caldwell, Carskadon, Dering, Dille, Dolly, E. B. Hall, Harrison, Irvine, Montague, Parsons, Parker, Paxton, Pomeroy, Ruffner, Simmons, Walker—18.

NAYS—Messrs. Brown of Kanawha, Brooke, Brumfield, Battelle, Chapman, Cassady, Hansley, Haymond, Hubbs, Hervey, Hagar, Lamb, Lauck, Mahon, O'Brien, Powell, Sinsel, Stevenson of Wood, B. F. Stewart, Sheets, Soper, C. J. Stuart, Taylor, Trainer, Van Winkle, Willey, Warder, Wilson—28.

So the amendment was rejected.

MR. VAN WINKLE. I move that the section be now adopted.

MR. HALL of Marion. Before the motion is put I wish to offer an amendment. I hesitated a little about it. I have not been in the Convention for two or three days and am not exactly aware of what has been offered and considered; but I will propose it, however, and if it has not been considered by the Convention, it may be; that is to say, amend the fourth line of the sixth section so as that it shall read: "or who has been convicted of treason or is under conviction of felony". If I understand the—

THE PRESIDENT. The Chair would remark to the gentleman that the hour for adjournment has arrived and it will perhaps take some time to discuss the proposition.

So the Convention took a recess.

THREE-AND-A-HALF O'CLOCK, P. M.

The President laid before the Convention the following:

AUDITOR'S OFFICE

Wheeling, December 4, 1861

To the President of the Convention:

Sir: In response to the call of the Convention, requesting a statement of the public debt of the State on the first day of June, 1861, I have the honor to transmit to the Convention a statement showing the State debt up to the first day of April, 1861.

STATEMENT

The actual outstanding public debt of the State, as shown by the Biennial Report of the Auditor of Public Accounts, on the first day of December, 1860, was	$31,452,159.63
Appropriations by the Legislature since the first day of December, 1861, as follows:	
To the Covington and Ohio Railroad, February 29th, 1860	2,500,000.00
Richmond and Danville Railroad, February 10th, 1860	350,000.00

Alexandria, Loudoun and Hampshire Railroad, February 9th, 1860	600,000.00
Manassas Gap Railroad, February 10, 1860	350,000.00
Virginia Central Railroad, February 9, 1860	600,000.00
Norfolk and Petersburg Railroad, March 2, 1861	300,000.00
Survey for Railroad from Grafton to White Sulphur Springs March 3, 1860	4,000.00
James River and Kanawha Canal Company, March 23, 1860	200,000.00
Kanawha River Company, March 8, 1860	300,000.00
Monongahela Navigation Company, February 9, 1860	54,000.00
Ravenna River Improvement, February 9, 1860	60,000.00
Kempsville Canal Company, March 26, 1860	18,000.00
Little Kanawha Navigation Company, February 8, 1860	15,000.00
For the purpose and manufacturing of arms and munitions of War, January 21, 1860	500,000.00
Appropriations for turnpikes during the same Session, in the aggregate	166,800.00
Appropriation in February, 1861, to purchase arms for the defense of the State, as the Legislature was pleased to call it	1,000,000.00
Making an aggregate of $	38,469,959.63

The above statement may be relied upon as a part of the State debt due on the first day of June last, as requested to be furnished to the Convention. How much more there may be the Auditor has no means of knowing; but the Convention can form their own estimates of the debt since that time by the spirit of rebellion that has pervaded the eastern section of the State since the 1st day of April last.

Respectfully,

SAMUEL CRANE,

Auditor of Public Accounts.

MR. WILLEY. I move that it be laid on the table and printed for the use of the Convention.
The motion was agreed to.

The President also laid before the Convention the following:

To the Honorable, the President and members of the Virginia Convention, now sitting in Wheeling.

Gentlemen:

The undersigned, the commissioner trustees, and principal of the Fifth Ward Public School of this city, having seen with pleasure the movements that have recently been made in your honorable body with a view to the adoption of a general system of public schools in the proposed new State of West Virginia, thinking it might in some degree facilitate the object in view, would respectfully and cordially invite you either as a body or by committee, to visit our school in the fifth ward of this city, working under a general law by no means perfect, and under other disadvantages which can only be removed by the operation of time.

We cannot, of course, claim for our school anything like the perfection which pertains to those of some other States; yet under all the circumstances we may be allowed to indulge the belief that we would bear a favorable comparison with the schools in most of the western cities which have been in operation a longer time and under much greater advantages than our own. Of this however, we would leave you to judge, our object in the present communication being merely to offer you such facilities as are within our reach for the purpose of enabling you to accomplish more effectually the great educational purposes indicated by recent movements in your body. With this view we would cordially repeat our invitation to favor our school in the fifth ward with a visit from your honorable body.

With Great Respect
We are, Gentlemen
Your Obedient Servants
Mathew Reed, Commissioner

Robert Pratt,
Lorenzo Wait,
John Goudy,
} Trustees

James H. McMechen, Principal.

MR. STEVENSON of Wood. I move that the communication be received, and printed; and that the invitation of these gentlemen be accepted.

MR. WILLEY. I would inquire whether it is necessary to print the document. I move to amend by laying it on the table and directing the Secretary to reply to these gentlemen that we accept the invitation with pleasure and will avail ourselves of opportunities to visit their school.

MR. STEVENSON of Wood. I accept the amendment.

The motion was agreed to.

The following reply was transmitted by the secretary:

Hall of the Convention,
Wheeling, December 4, 1861.

Messrs. Mathew Reed, Commissioner, Robert Pratt, Leonard Wait, John Goudy, Trustees, James H. McMechen, Principal, of the Fifth Ward School.

Gentlemen:

The Convention has received with pleasure the invitation to visit your school which you have so politely and appropriately extended to them; and have instructed me to say to you that they cheerfully and most cordially accept the invitation and will certainly avail themselves of the opportunity thus afforded them of seeing the practical workings of your school.

Please accept the thanks of the Convention for this expression of your respect and consideration; and be assured the Convention will not forget, in the formation of the new State Constitution, the great subject of education.

I have the honor, gentlemen, to subscribe myself

Yours very truly,

ELLERY R. HALL, Secretary.

MR. STUART of Doddridge. The order of the day before the Convention is the report of the Committee on the Boundary of the State. I presume it does not come up under the rules, and I would make the motion, sir, to take it up and consider it as we have the other report, section by section, and that we now proceed with the order of the day.

MR. DILLE. I would ask, Mr. President, if the report from the Committee has been printed? I have not yet had the pleasure of seeing a copy.

MR. VAN WINKLE. It has not been distributed, I believe.

MR. BATTELLE. I would suggest further, that as this report has not yet come into the hands of the members, would it not be better to lay this on the table for the present and resume the business of the morning.

MR. STUART of Doddridge. What is the motion?

THE PRESIDENT. None has been made.

MR. STUART of Doddridge. Then I move it be laid on the table and made the order for tomorrow at twelve o'clock. I think this report should be considered, because many matters to come before the Convention cannot be reported on until action is on this report.

The motion was agreed to.

THE PRESIDENT. The gentleman from Marion (Mr. Hall) had the floor on the unfinished business.

MR. HALL of Marion. Mr. President, I was about to say—or did state, I believe, before proposing my amendment—that I did so without a knowledge of what consideration had been given this subject already. My amendment, in line fourth of section six, looks to a change in this particular only: that persons who have been convicted of treason shall not by any contingency, by the clemency of a power that may exempt them from the extreme penalty, ever again be permitted to exercise the right of voting. I believe, sir, it is proposed that persons who resort to such practices as will be detrimental to the safety of elections—any member of the bar, or anything of that sort—are disqualified perpetually. It occurs to me that there is even more propiety in excluding persons who have been convicted of treason against the government, from ever again by any contingency exercising that right, and thus it is, I make that proposition to so amend. As I understand the language of the section as it now reads a party who has been convicted of treason and yet received executive clemency would at once be restored to the privilege of the citizen and again be permitted to take part in the elections the same as other men. I would forgive a man when he had repented, but I never would trust a man who was guilty of treason; and I think there is but one safe course; and though it might in individual cases seem to be a harsh rule, yet the safety and good of all requires that even in cases where it might appear harsh, the individual must for the general good submit to any hardship or harshness the rule might impose upon him. I therefore make the motion to amend in that particular, by inserting in the fourth line in the clause beginning, "but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason or felony"—there I propose to say "or who has been convicted of treason or is under conviction of felony".

MR. VAN WINKLE. The one would include the whole—"has been convicted."

MR. HALL of Marion. Yes, "has been convicted". The term here is, "who is under conviction." I apprehend if a party received executive clemency, he would no longer be "under conviction"; so that by the present reading the party thus convicted who may in the case of felony have served out his time or received the pardon of the Executive, or who in the case of treason may have been the recipient of Executive clemency, would then cease to be under conviction. I propose to change that and say that in case of treason, if he has been convicted at all, and in case of felony, if he is under conviction.

MR. LAMB. Will the gentleman from Marion allow me to make a suggestion.

MR. HALL of Marion. Certainly.

MR. LAMB. Would it not be a better shape to put the motion in to strike out the word "treason" from the fourth line and insert it before "bribery" in the next line?

MR. HALL of Marion. Yes, sir; that will accomplish my object; and I accept the amendment.

THE PRESIDENT. You will accept?

MR. HALL of Marion. Yes, sir.

MR. VAN WINKLE. Mr. President, I think it is very apparent that the rule which requires motions to be reduced to writing should be enforced, especially here, where words are proposed to be changed and other words substituted.

I would like to ask the gentleman how he would get along, supposing this amendment prevailed in a case of this kind: here in the exasperation of feeling that prevails, and will continue to, against those guilty of treason, it is entirely probably that some convictions will be had undeservedly. Now, sir, there have been numerous instances in the history of the criminal law of this and other countries where persons have been improperly convicted, although at the time the evidence seemed of the highest and most reliable character. Nevertheless, sir, even in such cases, it has been found afterward that the wrong person was convicted. Now, under the amendment the gentleman proposes to put in here, that person, wronged as he has been by the administration of the criminal law—deprived of the right of personal liberty—incarcerated in the penitentiary—his case aggravated by everything that can aggravate the case of an innocent man, unjustly convicted of a great crime—and yet the gentleman's amendment will shut out such a man forever from the privilege of holding office, voting, or anything else as a citizen.

Now, sir, this form of expression was introduced here by the committee on purpose to permit a man who had been illegally and improperly convicted and who had been pardoned by the executive in consequence—to admit him again to all his civil rights. I presume, sir, that such a case ought at least to be provided for. But now, let us take the other branch of it. Here is the law of the land that affixes a penalty to treason and felony. The penalty for treason has always been death, but by a subsequent section here it is proposed to allow the legislature to modify it in some cases—that is, degrees of treason, as they make degrees of murder and other high crimes; so that a person will not necessarily lose all his privileges if he is convicted of treason. He may be subject to the other punishments mentioned there, as provided for.

Well, sir, it is true the law fixes the penalty. That penalty is in almost the very language of the law the expiation of the crime. If the law does not fix a sufficient penalty, it should be made sufficent. If found that imprisonment is not sufficient, the penalty should be death. You can go no further in this civilized day. Well, sir, if the party expiates his crime—after he has served out his time of imprisonment—paid his fine—done what the law says is a sufficient penalty—I would ask, gentlemen, is that man to be still punished and punished forever? It strikes me, sir, there is a degree of injustice about the whole matter that ought to be fatal to this proposed amendment. I do not think, sir, either, that is the purpose or within the power of the law to become vindictive. One above us all has said "Vengeance is mine, and I will repay;" and any man, sir, who would attempt to form a theory of crimes and punishments based on the idea of vindictiveness would go very far from what I consider to be the true principles of government. The punishment of treason by death is justified by the national safety; but the rights of person are as sacred as the rights of a nation; and the right to punish only arises from the principle of self-defense. The community may punish to prevent the commission of crimes. It punishes for self defense, to protect itself against, in the language of your indictments, "all others in like cases offending." And, sir, I pray most heartily while ever I have anything to do with the infliction of punishments for these crimes of our erring fellow citizens that I may be actuated by a principle other than vindictiveness. I hope after I have discharged that duty I may appeal to my Maker and say that I did it merely in the discharge of a high and holy duty, I owed my country,—that it was my duty to see that these crimes were properly punished, in order that the country might be free from such in the future. If I can ascribe it to such a motive, I am justified in the sight of God and man. But, sir, if I do allow the lightest particle of vindictiveness to enter into my judgment, to take into my hands the thunder-bolts of the Almighty and deal out damnation round the land on each I judge a foe, I have done that which I cannot justify in the sight of God or man.

Now, sir, I trust gentlemen will look at this matter and satisfy themselves that which would deprive a person who has either been illegally convicted or a person who has expiated his crime by undergoing the punishment of the law—I would not ask to go one step, aye, one iota beyond—does not partake of the character of vindictiveness. And I hope, sir, now giving a start to our new State that we will not be anxious only to embrace in the principles which shall govern our state those important political principles which the greater experience of mankind since the formation of our Constitution, the greater experience of our country as sanctioned and recommended, but will also endeavor to be governed in fixing whatever we may have to fix by a not higher principle of morals than existed before, but by better defined moral principles than were extant in a former generation. I have, sir, truly stated according to the writers on the subject the object of all punishment—that it is the protection of the community, literally the right of self defense and self-preservation which the Almighty has given to his animate, and much of his inanimate creation. If so, sir, I think this provision as proposed by the committee goes far enough.

Now as to bribery in an election, that goes farther. It taints an election; it introduces a principle which if carried out would be fatal to all free government. In its effect the crime is perhaps as great as that of treason; and it appears to me that in the one case I would go no further than in the other. It might remain as it is, but I would have no objection to putting them on the same footing.

MR. WILLEY. There is I conceive, sir, a principle of importance involved in this proposition. Perhaps there is no class of offences liable to greater abuse, than the crime of treason—no class of offences in the prosecution of which there is greater liability of injustice and injury being done. And I regard the right of suffrage of such high importance, so fundamental in its character, the very life of free institutions, that I think the old legal maxim might be well applied to it, that it is better that ninety and nine guilty persons escape than that one innocent should suffer. I recur again to repeat the fact that there is no class of prosecutions in which from the nature of the case there will be so much liability to error of judgment, under the influence of prejudice and passion and excitement, and especially in view of the difficulties of ascertaining the facts upon which a conviction could be properly founded. And therefore, I feel disposed to oppose the amendment of the gentleman from the county of Marion.

Now, sir, take an illustration: suppose we were the Union men of east Virginia today, instead of occupying the favorable position which we do at present, and there were a clause in the constitution of east Virginia such as the gentleman from Marion would have inserted in this. Why, sir, what is Mr. John Letcher doing and what is east Virginia doing at this time?—indicting for treason, convicting of treason and for aught I know, hanging for treason. It is to be hoped, sir, that in the progress of events this tyranny and oppression will be taken from these Union men in east Virginia, and the true and legitimate government; and yet before that takes place or at the time it does take place the jails of eastern Virginia may be full of Union men convicted of treason and condemned to death; and when the loyal governor takes the executive chair, and a proclamation of amnesty is published, these men are let out of prison with the privilege peaceably to exercise the functions of free men. In the progress of events we may be placed in such a predicament for aught that I know. It is a supposable case at any rate. I merely mention this as an illustration of the injury that may be done.

Now, sir, it is fair to presume that when a man is pardoned he is pardoned because he is innocent, because he is not deserving of the death to which he was condemned. That is the logical conclusion to be drawn from the exercise of executive clemency in that behalf. And shall the innocent man suffer—a man who by the laws of the country has been declared to be innocent—shall he suffer the deprivation of the greatest right of a freeman, the right of suffrage? The fundamental right of a freeman, and the polar star in popular institutions? I think not, sir. If the traitor is guilty, why I should have no objection of making the disability perpetual; but the very idea of pardon presupposes innocence; and being innocent, he ought not to be deprived of the right of suffrage. If he is guilty, he will be hung—and he ought to be hung; and I suppose the amendment of the gentleman does not extend beyond the grave. It can only extend to cases of pardon. But conviction and pardon presuppose innocence, and the result of the amendment of the gentleman from Marion would be to deprive an innocent man declared to be so by the laws of his country of the high and invaluable right of suffrage.

I shall be constrained, sir, to oppose the amendment.

MR. BROWN of Kanawha. Would it be in order to amend the amendment?

THE PRESIDENT. Yes, sir.

MR. BROWN of Kanawha. Then I propose to amend the amendment by striking out the language proposed to be inserted in the amendment and the word "or" in the fourth line of the sixth section before "felony" and the last word "who" in the same line; and on page two, the first four words of the first line "has been convicted of".

THE PRESIDENT. Those amendments—it is almost impossible for the Secretary to keep them properly in mind to get them on record properly, if not committed to writing.

MR. BROWN of Kanawha. I propose to make it so read that "no person who is a minor", etc.,—the point is, sir, that I oppose depriving a man any more in case of bribery than of felony but that in one case no more that in the other should it be executed; and it seems to me the remarks of the gentleman last on the floor apply as well to one case as to the other—to felony, bribery and treason all alike.

MR. LAMB. I would ask the gentleman from Kanawha to withdraw his amendment. I do not think it can properly be proposed as an amendment to the amendment of the gentleman from Marion. It is only confusing the matter. The gentleman from Marion wants to accomplish one object and the gentleman from Kanawha another and entirely distinct object. Let us take the vote on the amendment first proposed, and then the amendment of the gentleman from Kanawha will be properly before the Convention.

MR. BROWN of Kanawha. I withdraw.

MR. HALL of Marion. Allow me, sir, in response to the arguments of the two gentlemen who have last spoken upon this question to say that I was unable when I submitted this amendment to understand how it was that the committee who prepared that report had made the offence of bribery in an election a disqualification to the party ever after to vote under any circumstances; and yet they would nurse that treason that is so common throughout our land by saying that if it becomes so common that it becomes a sort of public necessity, we will restore you again and make you citizens as we are. I say I was struck with that feature of the report. The very fact that a party convicted of treason was not perpetually thereafter prohibited, but that a party convicted of bribery in an election was prohibited for all time under all circumstances struck me, and I could not help thinking if there was any offense in the whole catalogue of crimes for which a man should be perpetually deprived of the privilege of exercising the elective franchise, the offence of treason against that government under which he proposed to exercise it was that offence.

I trust, sir, that I offer this in no vindictive spirit. Like my friend from Wood, I would hope that we would indulge in nothing vindictive. That we would be influenced by that only which would accomplish the human objects of the law; that our only purpose should be to prevent crime; but I respond again, what more successful method can we adopt to prevent crime than to put upon the traitor the stain—the mark of Cain—and let him carry it to his grave?

My friend from Monongalia suggests that he supposes the amendment does not propose to follow the party to or beyond his grave. There was a time, and there were offences, the penalties for which did follow a man into his grave. I have no such feelings that I submit this. But in response to the suggestion of the gentleman from Monongalia that the fact that a party has received executive clemency—has received a pardon—presupposes that he was not guilty—well, we may look at the thing, and we may talk about legal presumptions and legal deductions, but when we look abroad we know that that is not the fact, we know that of parties who have been convicted—it is not in a majority of cases—no, verily, I believe not in one case in ten—that a party receives executive clemency because he was not guilty. No, sir, his wealth and influential relatives come to his aid—the plea that his health is waning—that he can do no more injury abroad—that an example has already been made of him—that he has already suffered enough—and our human feelings rise up, and we say readily, release him, turn him from your prison with your executive clemency. That is in cases where the penalty is imprisonment. Where it is the death penalty all these influences are brought to bear in a shorter time; and I do not believe in a majority, or any considerable number of cases where the executive clemency is extended, it is because they have not been proven guilty. All these extraneous influences are brought to bear.

Well, now, sir, it is suggested that this thing may fall heavily on so many, that the Union men in Eastern Virginia would come under the ban of this law, convicted of treason, to "honest" John Letcher's administration over there.

MR. WILLEY. I only used that as an illustration.

MR. HALL of Marion. I had misunderstood the gentlemen; I thought he was arguing that this would operate to the prejudice and detriment of our true Union men over there who are in prisons. They have a sweeping treason clause over there, which originated in the fertile brain of John Tyler, at a midnight hour; and I don't know what they may be doing under it. I am advised that it has caught me—except that it has not caught me. But I do not think this would effect anything there, nor do I suppose it would effect anything anywhere unless the party were really convicted of actual treason. Well now if he is convicted it is argued that there is no class of offence where convictions are so liable to take place when a party may possibly be innocent. We will admit that when offences of this sort exist or occur in our land, the public mind is excited; that it does require care to see that we do not be carried away, that we should look at things calmly, and act on the evidences without prejudice. We admit that fact; but I ask that you go a little further, and ask why this is a fact. I ask why it is that whole communities are so wrought up when offences of this sort come before our tribunals. I ask what response can be given to that but this; that here is a party seeking to destroy our very interest—our lives, property and everything—and thus it is that whole communities are stirred to the utmost and so excited that gentlemen tell us they are really disqualified for meting out justice to the guilty party. Now I just ask gentlemen to look at the thing in this light. When the offence is of that grave character that it dethrones the reason of the citizens of the whole community, I ask ought you not to erect some barrier between them and the recurrence of the crime—ought you not to put the mark of Cain upon the guilty parties that men may be deterred at the very threshold before they have involved themselves in this ruin, is it not wise? The very object as stated by my friend from Wood, and admitted by everyone—the object of punishments is simply to prevent crimes by others in the future. We do not execute a man with a view to restore to life again the party he has murdered, but to prevent him from repeating the crime and to prevent others from committing like offences. Now, sir, if this is that crime that stirs up communities until they are so maddened that those appointed for the purpose are incapable of meting out justice, I ask that you put a mark on this thing in advance that men may be warned, that we may prevent the necessity, as well as the crime, of having the reason of our community dethroned by accusations of the crime. I trust that I have no vindictive feeling that will prompt me or influence me in my action in any matter. If I have, I am unconscious of it. I trust none of us entertain such a feeling. But I ask now, if situated as we are, if there is not a danger upon another hand? I ask if there is not danger now when treason has become so common in our land as to be found upon every hill and in every valley, so common that we are ready to say that we would apply the remedies of the law but it will fall upon so many persons we will forbear? Is there not a feeling of that sort stealing over the minds of gentlemen? If there be such a feeling, let me say that unless we want a repudiation we must say although the number be legion you are guilty and shall pay the penalties of the law. We must do it. Unless we enforce the law it ceases to be of any force whatever; and unless we prescribe penalties for offences that are commensurate, that are sufficient to deter persons from committing those offences, we may expect them to be committed whenever occasion may offer.

I do not know what effect this thing might have. I suppose we do not retroact. Nor do I care. I am ready to say to all mankind you know the penalties prescribed; you know the wickedness of the act—and I would impose such penalties—I would not care how severe the penalties might be—I would lay a mark there. I would not object if it could be provided that where it was afterwards proved that a party under conviction was really and absolutely not guilty, then I would be willing to restore him; but I think there would be very few cases of the sort, and do not think it worth while to attempt to provide for them. Therefore, it is that I propose to place the crime of treason, at least upon the same footing and with an equal penalty with bribery in an election; and if there is anything vindictive in proposing to disfranchise a party who has been convicted of treason, I ask how the gentleman himself, my friend, from Wood will vindicate himself as a member of the Committee submitting the report for suffering that vindictive feature against a party who has seen fit to engage in bribery at an election? Is there not something equally vindictive in that? And that too without the necessity that does exist at least in the other. I believe it is an old-feature. I think that provision disfranchising parties who have been convicted of bribery is a feature of our present Constitution. I think that is right, because the man who would wilfully corrupt the ballot-box never should be permitted to go near it. I think it right. And then I think a little more than that: I think a man who would coolly and deliberately lay the axe to the tree of government, ought never to be permitted to more than live under it—never to participate in the management of its affairs. I would forgive him but I never would trust him. Show me a man who has been guilty of treason and while I had a lingering doubt as to his innocence I would not trust him; and while the rule might fall harshly sometimes—while there might be cases, as there are, in the administration of justice under any circumstances where parties innocent would be convicted yet the good of the greater number requires that these should suffer. I ask if the same reasoning would not require us to abolish capital punishment for murder? Do we not know that innocent men have been executed for murder, of which they were innocent and the fact came to light after they were executed? And yet can we on account of that thing forbear to execute for murder? No, verily; the public good demands in order to prevent the commission of such offences that we continue to do the best we can to judge whether they are innocent or guilty and execute where the testimony shows there is guilt though we may execute innocent men. Are we not bound to take that course with reference to this felony? I want not to be vindictive, but I want to give no bounty to those who have treason—I want to meet them with the halter and the word, and tell them I will hang them upon every occasion if they attempt again to make war on our government. That is my feeling. If that is vindictive, then I am vindictive. It is not against a person but against treason that I am vindictive, and to point it out I would set a mark on them they would carry to their graves, though it would even mark their posterity.

I believe I would vote for the amendment of the gentleman from Kanawha, because I believe that is right. I believe a man who would pollute the ballot box ought not to be permitted to participate in the privilege of it. But while I might be willing to vote for that I would yet insist on leaving this mark for this highest, this greatest of all offenses—to leave a mark there to warn them and deter them in the future from treading on this ground.

I really cannot comprehend the force of the argument of my friend from Wood—while he would retain the one and yet exclude it as to felony. Nor do I conceive the argument of the gentleman from Monongalia can be of force unless he will carry it out to an it should be so; that where there are strong extenuating circumstances thrown around the case, the court should have a right to inflict a penalty according to the degree of the offence. Now, sir, extent that will leave us without any penalties to secure order, enforce law, or protect life or property in any case. His argument proves too much. It goes to say that because it is harsh in some cases, therefore you must not punish. That would be a destruction of all law, to remove all penalties. We have long since learned the fact that without penalties to enforce the requisition of law we cannot have peace or good order, or security of person or property.

I therefore trust it may be the pleasure of the Convention to adopt the amendment, the effect of which will be to place the offence of treason upon the same footing as bribery in an election has stood heretofore and as it is proposed to stand in the present report of the committee.

MR. STUART of Doddridge. Mr. President, if our courts and juries like Infinity were never liable to err, and were always correct in their judgments, then I would be willing to support the amendment of the gentleman from Marion. But they are all human and all liable to err. And if an innocent man should be convicted for treason and through the clemency of your executive should be pardoned, sir, I really think we should not at least enact a constitutional provision to deprive that person of the right of suffrage.

Now in looking to another section of this report—

MR. HERVEY. Will the gentleman give way a moment?

MR. STUART of Doddridge. Certainly, to oblige the gentleman.

MR. HERVEY. It was a remark that was dropped by the gentleman from Marion. I had drawn a few words to which he said he would have no objection to having inserted. With your permission I will read those words: "Or who is under conviction of felony or who has been convicted of treason, unless it can be shown that such conviction is erroneous."

MR. HALL of Marion. I have no objection to that. I accept that.

MR. STUART of Doddridge. I understand, sir, the amendment is accepted by the gentleman from Marion.

I was just calling the attention of the Convention to section thirteen of this report. I find there are different grades of punishment attached to the crime of treason, and I think it is right as I before stated our courts are liable to err; and I for one do not wish to anticipate that our executive will be corrupt, but that he will always be pure, high exalted above motives of the kind; and when he exercises his clemency, I for one will be inclined to think it will be for good cause and for good reasons. It has been admitted that many an innocent man has been punished to death. Well, sir, if it be ascertained before the party is punished for treason, where the penalty is death, that he is not at all guilty, and the executive interposes and pardons him, why should he not be entitled to the right of suffrage. As remarked by my friend from Monongalia, it is better that ninety and nine guilty persons go unpunished than that one innocent person should suffer. That is a maxim that is tolerably old and one that I feel disposed to follow. And if I can see the amendment is like to inflict punishment upon an innocent man I feel like interposing, and give our law makers power to repeal so far as it extended towards an innocent man; but I cannot see the necessity of placing him in the same category of a man who has been convicted of treason in its highest character.

I really think, sir, we should not adopt this amendment; and I, for one, will vote against it.

MR. LAMB. I do not rise for the purpose of occupying the time of the Convention with an argument on this subject; but simply to direct the attention of the Convention to what I conceive would be the true practical operation of the amendment of the gentleman from Marion. A man is convicted of treason; he is subject to the penalty for that offence, that penalty is death: dead men do not offer to vote. In the first place then it has no application whatever except to those who are convicted but upon whom the penalty of treason is not executed. It may not be executed upon the party because he may escape. Neither in this case will the amendment of the gentleman from Marion have any operation, for if he is convicted of treason and escapes he will never offer to vote. There is but one solitary case, then, to which the amendment of the gentleman from Marion would apply and that is the case in which a party is convicted of treason and is pardoned. There seems to be a misapprehension existing in the minds of the Convention upon this subject of pardon. The executive cannot pardon for treason; at least under the Constitution and laws of Virginia that is the case, and will undoubtedly be the case under the Constitution of the new State. The pardon for treason is to be by the action of the legislature.

Here then we come at the precise question presented by the amendment of the gentleman from Marion. A man has been convicted for treason; the legislature, the representatives of the people of this Commonwealth have seen fit to pardon him; shall we say that that pardon shall be ineffective, that they cannot remove the penalty? Shall we embody this declaration of want of confidence in our legislature in the Constitution of the new State? They may have found that he was guiltless of the offence. They may have found that he had acted in the matter which led to his conviction under compulsion which he could not avoid; and yet, gentlemen, though the legislature may be satisfied that he is entitled to pardon—though the legislature may be satisfied that he is really guiltless of the offence charged against him—though the legislature may be satisfied he has acted under such a compulsion that no reasonable man could be expected to act otherwise—yet the penalty of the offence is to be fastened upon him forever.

I cannot vote, gentleman, for the amendment.

MR. HALL of Marion. Will the gentleman allow me to ask him a question? From whence would clemency proceed when a party is convicted of treason against the United States—tried in the United States Court—a citizen of Virginia?

MR. LAMB. We have nothing to do with treason against the United States. If the act for which a man is arraigned for treason against your State government involves treason against the United States, he cannot be tried for treason against the State. The law says you cannot inflict any penalty for an act which is treason against the United States. You cannot act at all in such a case. That matter is not, however, up for the consideration of the Convention.

MR. HALL of Marion. If the gentleman will allow me—he does not comprehend the question. A citizen of Virginia may be indicted, tried and convicted for treason against the United States, and nevertheless is a citizen of Virginia. Suppose that he receives clemency and is still a citizen of the United States—are we not entitled to say he shall not vote?

MR. LAMB. No, sir, as I understand, the law most distinctly declares that if it is treason against the United States, you jurisdiction of the government of the United States, and the State cannot impose a penalty for it. That whole subject is within the government has no right to interfere with it one way or the other. You cannot punish for offences against the United States. You can punish offences against your State government and your own authority. But not merely as to the question of conviction, but as to the mode of punishment, treason against the United States is to be punished only according to the laws of the United States. I read that, sir, in a work that the gentleman has here, but a few minutes ago.

MR. WILLEY. I would suggest to the gentleman from Marion this fact—

MR. LAMB. One moment: "A State cannot take cognizance of, or punish, the crime of treason against the United States." (Story's Commentaries, 173.)

MR. WILLEY. Of course, Mr. President, I do not suppose the gentleman contemplated going that far. But here is the thing—and you will excuse me, Mr. President, for the more I reflect on this matter the greater seems to be its importance—it rises in magnitude. Now, sir, how many citizens, loyal at heart, within the State of West Virginia and especially within the territory we propose to embrace in the enlargement of this State, are this day in the Confederate ranks under compulsion and at the point of the bayonet? And yet, sir, they are guilty of the overt act and the fact could be established by a multiplicity of witnesses. You arrest such a man, or such men—multiplied hundreds of such men—and indict them and convict them of treason, and these facts come to the knowledge of the pardoning power, to the knowledge of the legislature. Every principle of loyalty to the State, every sentiment of mercy and justice would demand at the hand of the pardoning power an act of clemency. And you turn these men abroad again—whose hearts have always been with us, who in the hour of battle rather than fire on their friends—not those who would be arrested, but those of a similar class have been found bleeding and dying and dead, with their touchholes filled up with plugs of wood, and their muzzles half full of bullets, rather than fire on their friends. Such men as these would be liable to disfranchisement, and have the highest distinguishing attribute of a freeman taken from them; and, according to the policy of the gentleman from Marion, the mark of Cain branded on their fore-heads, as a thing at which the "slow moving finger of scorn" would be pointed, as unworthy the rights of a freeman.

Sir, I fear we carry this matter too far; and I do trust the remarks of the gentleman from Wood, to beware in times of excitement, and in laying the foundations of a great and Christian State, we do not incorporate in the fundamental law principles of vindictiveness. Let us err, if we err at all, on the side of mercy and generosity. I fear, sir, that a provision of this kind might lead to great injustice and great hardship; and I hope it will be the pleasure of the Convention not to adopt the amendment of the gentleman from Marion.

MR. HAGAR. I live in the midst of rebellion when at home. As loyal citizens as are perhaps in the State of West Virginia, have been ordered out—belonged to the militia—and had to join the Confederate army, and have perhaps shot their guns while there. Some have been killed and others narrowly escaped. These men according to law are guilty of treason. There are numerous cases—many of them from Logan, Boone, perhaps Raleigh and other cases. I think the Divine code is, do justice and love mercy. That is about all I have to say.

MR. HALL of Marion. I should ask pardon for troubling the Convention further about this matter, but beg the indulgence of the Convention one moment.

I am sorry to differ with the distinguished gentlemen, who seem to be a unit in opposition to it, but I cannot help it—it is my misfortune. Allow me to say in reply to an argument of my friend from Monongalia, that a party who is driven to take up arms, that he should slay his thousands commits no offence whatever. Should I take the life of my friends on the left under compulsion, I ask am I guilty of murder or manslaughter, or any offence?

MR. WILLEY. The gentleman misconceives my argument which was that there would be great liability to conviction of such parties in these circumstances.

MR. VAN WINKLE. They might not be able to prove the compulsion.

MR. HALL of Marion. I do not see that it would be a more difficult fact to prove than others at all. It occurs to me these facts would be above all others most easily proven.

MR. LAMB. Will the gentleman allow me to interrupt him one moment. You would have to bring witnesses from the Confederate States.

MR. VAN WINKLE. The land of Secessia.

MR. HALL of Marion. We have them in our midst and all over our land.

MR. LAMB. There is where compulsion is exercised, and there is where the evidence must come from.

MR. HALL of Marion. There is no difficulty in getting the evidence of anything that occurs there. We have among us—and if we have not, we are going to go over where we will be among them—where we will know all about them. The idea of modifying a penalty because there is a possibility of your not being able to arrive at the fact is to me new and novel. It occurs to me that when you provide penalties you provide them according to the offence; and if you are apprehensive that parties will be convicted who are not guilty, you must throw safeguards around the administration of your laws, and not attempt to provide against it in the laws themselves in making them. Is not that the point at which to guard? If you are going to tell me because there is a possibility that a man may be convicted of a crime of which he is innocent that no penalty shall attach to the crime at all? Do we not when we provide penalties provide them with reference to the offence; and then when we administer the laws do we not throw around the administration of them the safeguards that will prevent persons from being punished who are not guilty? Now I have no idea of being influenced here by the cry that we must not "seize the thunderbolts" here and deal out "vengeance" for it is not ours. I am not so sure of that.

MR. VAN WINKLE. It says so in the Bible; there is where I got it.

MR. HALL of Marion. Individually vengeance is not ours; but if we are men, to maintain that which our forefathers have given us is ours, and if we are worthy descendents of those sires we will do it at all hazards. Nothing is cruel that is necessary in order to secure the government, the lives and property and honor of our people. I say nothing that is necessary for that purpose is cruel. The gentleman says here, we may be carrying this thing too far. Now I find in cooler times when we had a convention which assembled at Richmond and sat there for some months and then went in the warm weather to the Springs and luxuriated there—when they had everything quiet around them and nothing to excite—I find (will the page bring me that Constitution?) that the provisions of that same Constitution are that: "No person shall have the right to vote who is of unsound mind, or a pauper, or a non-commissioned officer, soldier, seaman or marine, in the service of the United States, or who has been convicted of bribery in an election, or of any infamous offence;" and in the name of Heaven, if treason is not an "infamous offence," what is? Yet this is what was done before we dreamed of this treason—of this rebellion! Then the villainy of Aaron Burr stood out like a single granite rock on the mountain. Now when treason rises up all around us until it is like a forest, shall we slack our hands and modify the offence? No, verily.

I feel some interest in this question, and I am just like my friend from Monongalia, the more I think about it the more I think there is in it, and the more necessity I see for us adopting this provision. I feel somewhat timid when I look and see the gentlemen who seem a unit in opposing me in this view; but when I hear their arguments I cannot appreciate their force or cogency, and, therefore, I must act from the best judgment I have in the matter. I do not find argument in a proposition to do away with the penalty, lest somebody may be punished who is not guilty. Nor do I comprehend the objection urged, that we are distrusting the legislature of the State, from whom alone can come the clemency that can release a party who is convicted of treason from the penalty of death. My friend from Ohio county I believe did not, with others, faintly catch the idea I sought to convey, but read to me what I very well knew before and very readily admit that where a party is guilty of treason against the United States we cannot take cognizance of that offence in a State capacity. We concede that very readily. As prosecuting attorney in my own county I so instructed the grand jury. But it is nevertheless competent for us to say that persons who have been convicted of treason to the United States and who reside within the State of West Virginia shall not be permitted to vote and to control our State matters. Why, you take it upon yourselves to say paupers shall not vote; you take it upon yourselves to say that persons guilty of bribery in an election shall not vote; yet because he is not convicted of treason to your own State authorities, though he is covered all over with treason against the United States—though he has involved you in all the troubles that were possible for men to bring upon you, and with all his wickedness today—yet you, say because your treason was against Abraham we will take no note of it—we will treat you as a loyal citizen—take you by the hand and meet you at the ballot box. No, verily. We do not propose to punish but to disqualify, so far as that is a punishment. We had that in the other case I named. To a certain extent, disqualification is a penalty; and to that extent it is competent. We have a right to say who may and who shall not vote in our State. Now, I want to know if a party guilty of treason or any other infamous offence is the less guilty because that offence may have been committed in the State of Ohio and be convicted in Ohio courts? Are we to give him the hand of fellowship and turn our backs on a man who has been convicted of a less offence in our own State? I think not. I cannot, therefore, understand that argument. And I do not think that in urging this matter I am influenced by any vindictive spirit. I think I feel nothing of the sort; but I do see, as I before remarked—and I do not mean to speak of having seen it particularly here, because I have seen it elsewhere—but for sometime past I have seen a disposition to lower the standard because of the universal prevalence of this guilt when in truth and fact we ought to rear it. But because the penalty will fall upon so many, the general impulse—it is a very kind impulse of our nature—the inclination, is to say, because it will fall harshly on so many, let us modify it, let us make it a little less and a little less, until finally, it does occur to me there is some danger of our running into an invitation to parties to go and do so more—not to do so no more but to go and do so more. It does strike me so.

I trust I am understood in this matter and that it may be the pleasure of the Convention to adopt the amendment.

MR. PARKER. Mr. President, if we were here prescribing a penalty that was to operate now at this time upon the guilty as well as the deluded portion of our fellow citizens, no one in this Convention I trust would be more tender than myself. I believe that a great portion of those that are engaged in the present rebellion are deluded. I believe that a great many of them are there per force and against their will. No treason can ever reach them. No conviction by the American people anywhere can ever be procured against them. They are safe. We are here trying to inaugurate a new government, and if we can get it started by sometime next summer we shall do well. I trust in God before next summer this war will be through with. This treason, this rebellion is new matter as my friend from Marion remarks. Aaron Burr! The American people—a great many of them—have no appreciation of what treason is. It hangs over our hills in West Virginia. We find men committing treason with as little compunction or idea as to the wrongfulness of the offence as they have in shooting squirrels. No man will be more tender than I am towards those deluded men. We all feel the awful state our country is now in. What has brought it here? It is treason. Now for Heaven's sake when we start a government we cannot pass laws retrospective. New Virginia can pass no laws to act on the rebel citizens of Virginia. We are fixing up for something that is beginning to live and act; and I trust when it does begin treason will have passed away. Then I say my feeling is to hang around, in our new government, that terrible offence which strikes at the vitals of government,—that offence which has brought us to the terrible condition we are now in—to hang around it, Mr. President, all the terrors the human mind can devise or imagine—I do not care how much; it is a preventive; it is to deter others forever and forever from repeating it. It is not to act on anyone now. That belongs to somebody else. It is not our business, I do say let it hang about it, I would not magnify it. I would make it so terrible that no man would dare to expose himself to be convicted. That is what I would have it. For that reason, I shall vote for the amendment. If it was to act in the present, I would vote against it. As it is prospective and to hold up in terror of all future rebels, I am for it and I wish we could conjure up something ten times as terrible to hang upon it.

MR. BROWN of Kanawha. The gentleman from Marion urges upon the consideration of the Convention the fact that treason against the United States is the treason that is to constitute the disability to be prescribed by us. The gentleman last on the floor tells us the object is, future and not past, and that nothing that will be in the Constitution is to affect or have an application to that which is past. But, now, sir, let us see how far the view of the gentlemen are correct. Treason against the United States we are told is to be a prohibition to the exercise of the right of suffrage in the State of West Virginia under this Constitution; and now, sir, let us see. When this goes into operation in the coming years, the whole courts of the State are crowded—or the Federal

Courts that may be within the State are crowded—with the five hundred indictments at every single court for the next five or six years to come, of these very deluded peoples, and upon which conviction in every instance must take place, because the proof is so very clear and simple that those who run may read; and by that very provision while you are convicting not with a view of punishing, yet you are excluding them from the right of suffrage. When this Constitution will be in operation and a man is convicted of treason, then he is within the prohibition and must be excluded from the right of suffrage. But we will find the number to exclude will be almost legion. I would simply narrate an instance of hardship as gentlemen have been speaking of the character of individuals in their counties. At the battle of Boone Courthouse a prisoner was taken, a respectable, good, honest and humble citizen—for I had occasion to know him—with a worthy family, depending entirely upon his labors and exertions. He was taken in battle with his gun in his hand and with a load in the gun; and when he was carried to Kanawha a prisoner by the Federal troops, I was sent for to see him; and as the tears streamed down his cheeks he detailed to me the circumstances in which he was brought into this calamity; with his family helpless and almost houseless, and without the means of sustenance in his absence, he doomed to a long incarceration at Camp Chase, Ohio, until the fortunes of war may return him to his family. He said he was a Union man and had been a Union man. He lived in a secession neighborhood; the colonel of the county had called upon the militia under the law of the State to come forth to rally against these invaders; and these leaders called him, and they further told him if he did not rally to that call and did not obey the law he might expect as the penalty to be shot. He, like many hundreds of others were called into the crowd and fell a victim to the misfortune of the country. But he is as innocent of guilt as any man in the world. And yet, sir, in this very identical case, this man must be condemned not only to the penalty of treason for which he might be pardoned by your executive and freed by your legislature, but under this inexorable law he would be forever prohibited from exercising the right of a freeman.

Are you prepared then to adopt a Constitution which will disfranchise a large number of Union men in the country and I dare say many in this very house; for I have no doubt there are those in this house who have given "aid and comfort" to the rebellion by furnishing provisions and shelter to their friends and relatives in the rebel army. Then, sir, would you turn all these people away because under the circumstances they might be tried for treason—for this treason is one of those crimes that you can make almost anything treason when you get the jury on your side. I think we ought to show some magnanimity in choosing the laws of the country. I do not think it is a time for us to enter into that spirit that would reopen the inquisition. It is better for us to adopt a policy to heal the bleeding wounds, and to restore peace and harmony and peace and union again among our people and that we may unite in brotherly kindness in supporting the government of the State and country.

This is all I have to say.

MR. WALKER. In drawing an idea from the question which has just been spoken of by my friends on this subject, it seems to me my friend from Kanawha has not understood the secession principles as well as other men who have been more concerned with them. It seems as though one gentleman has spoken to him with tears in his eyes in regard to his being a Union man and that he was brought into that condition against his will. I want to refer this Convention to the fact that that is the voice of every secessionist you get. Every single one you bring before the authorities tells you, I am a Union man; I am a good Union man. I want to know if that kind of a spirit is going to rule this Convention. I say such doctrines as that would certainly cheat us out of our rights at any time. Is it possible to think that there is any gentleman here that will rely upon single word of the party that is arrested and brought up as a prisoner and believe what he says? What is the evidence worth? They will, every man of them, tell you for the truth, I have done nothing, that they are Union men. They will do it to extricate themselves from the punishment. In regard to the question, I do not see why it is possible that the gentlemen who have argued this case will dread a fair administration of the law by your loyal citizens. It seems to me there is a fear in the minds of every man of them that our loyal citizens will not administer justice and regard the oath they will have to take. I am astonished to see such fears in regard to the loyal men who have stood up so well and so long for the Constitution and laws.

MR. BROWN of Kanawha. I now wish to propose the amendment I indicated before to strike out the word "or" before "felony" in the fourth line, also the word "who" at the end of the line, and the words "has been convicted of" in the fifth line, so that it will read: "but no person who is a minor or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State," etc. The only remark I propose to submit is that the sentence is then rendered harmonious with the same disability for each offence.

MR. VAN WINKLE. Although I conceive the matters are entirely distinct and different principles apply to them, yet I am willing, so far as I am concerned, to accept or adopt the amendments suggested by the gentleman from Kanawha.

MR. WILLEY. I do not know whether I comprehend exactly their operation.

MR. VAN WINKLE. It is to put them all on the same footing.

MR. WILLEY. But what will be its operation on the party guilty of crime under conviction of bribery? How long will the penalty last?

MR. VAN WINKLE. If it is punishment by imprisonment, to the end of the imprisonment; if by fine, till the fine is paid.

MR. WILLEY. We do not know what the penalty will be. Is it to extend until the fine is paid or the imprisonment has expired? I am disposed to favor what I suppose to be the object of the amendment, but really I do not see exactly what is to be its effect on the guilty party; how far he will be punished by it. It can have no effect at all until he is found guilty and convicted; and then what is to be the penalty? How far is it to go? I do not understand it exactly.

MR. HARRISON. I feel constrained to oppose the amendment as proposed by the gentleman from Kanawha. I voted for the amendment of the gentleman from Marion. I would vote for still further enlarging the operation of the proposed section. And I will say here, sir, as the gentleman from Wood remarked yesterday, I do not feel disposed to disregard the experience and wisdom of the past thirty years in the history of our Commonwealth. I do not feel disposed to lay aside all we can learn from the lessons of Jefferson and Madison or Marshall, or the founders of our first Constitution or all the old worthies from that day down to this. If there is anything good in it, and I think there is, let us have the benefit of it. If the proposition of the gentleman from Kanawha prevails, sir, it seems to me you have removed all restrictions of the character of "infamous offences," as termed in the Constitution from the elective franchise, because, sir, I believe all the crimes there mentioned are punished by confinement in the jail or penitentiary; and as the party is so confined he has not the power to vote while "under conviction" anyhow; and, sir, when this restriction is removed, when he is released from the bonds of the prison, he comes out, as the gentleman from Marion stated, a criminal still. The punishment does not wipe out the crime. The punishment does not make him a better man; and I for one feel no disposition, in inaugurating this new State of ours, to hold out to men who have no regard for the law and none for the rights of their fellow citizens—I feel no disposition to hold out to them a full fellowship in all the rights of citizenship of the Commonwealth. If a man so far forgets himself as to disregard the rights of his fellow citizens, so far as to violate the laws by the commission of any infamous crime, I for one do not feel disposed to extend to him the hand of full fellowship ever afterwards. It may be a vindictive and harsh feeling, but I feel constrained to entertain it; and I think when this Convention throws away all restraints of this character on the elective franchise, we might as well blot out the whole provision, so far as that is concerned.

I hope, therefore, the amendment of the gentleman from Kanawha will not prevail.

MR. LAMB. Mr. President, let us understand distinctly if we can the effect of the motion upon which we are voting. There is a great deal of force in the suggestion of the gentleman from Harrison. To my mind, it is conclusive on the subject. If the amendment be adopted, as soon as the party who has been convicted has suffered the penalty which is inflicted by the law he will be under conviction no longer. The penalty may be a light imprisonment in the jail, and in thirty days or three months he comes out authorized to exercise with all the good people of this Commonwealth the elective franchise. It may be a fine, and he pays the fine and is restored at once to his competency. I do not think we can contemplate this result. It would be much better that the words should be retained and that in cases of bribery in elections the disfranchisement should be imposed upon him as a permanent penalty. If it is proper to impose it at all,—if it is proper to impose this as part of the penalty, it is making a mere sham of it to relieve him from it as soon as he suffers the punishment which the law may impose on the offence.

MR. WILLEY. Mr. President, I took my seat for the purpose of eliciting the view of gentlemen as to the operation of this amendment, more especially as to what "under conviction" would mean, what operation it would have on the offence. Now, sir, it occurred to me when I made the remark, that the penalty fixed by the law upon convictions of the offence of bribery in an election would be very slight, and its operation comparatively speaking would be very short. In the case of treason, the penalty is death unless the pardoning power is interposed to save him from it. If he suffers that penalty he will never vote again. But a man guilty of bribery may suffer the penalty and vote again in a month or two, at the next election. Now, sir, I hold that bribery at an election is virtual treason—treason of the meanest character. It is an effort to subvert the government; an effort to destroy the foundation stone upon which every free and republican government is erected. Corrupt the elective franchise, destroy its purity and its sacred character, and I would rather have a despotism; I would rather have officers appointed by the throne; I would rather owe allegiance to a crown. It is the great palladium of free institutions, and when it is corrupted or destroyed or impaired, the government is virtually overthrown. And I repeat again, it is virtual treason, treason of the deepest dye and of the meanest character. There should be some commensurate penalty annexed to such a crime; and the man who is guilty of assailing in that way this great fundamental safeguard of republican liberty, ought not to be allowed to exercise it. A restriction should be imposed upon him. He well deserves to be disfranchised. Perpetual disfranchisement is a most proper punishment for the offence. He seeks to assail and destroy the freedom and purity of elections; the freedom and purity of elections, an essential to the security of the government and our institutions; and no man is a safe man in the community who will attempt to do any such thing; and we ought to have the power taken out of his hands.

Now, sir, the same reason which I urged a while ago against the gentleman from Marion does not apply here. The principle reason that influenced me in opposing that motion was as I mentioned, that the prosecutions for treason would be in times of excitement when the foundation of society was upheaved, when the public mind would be unbalanced, when the passions would be on fire and party spirit running high, and a thousand other circumstances that might be mentioned all increasing the liabilities of conviction where the party was in fact innocent. Now this will never be the case in a prosecution for bribery. It is a small fact, and the great difficulty will be to get a conviction even where the party is guilty. And, sir, it is of all other treason, the most despicable and the most dangerous. And I am very much inclined, sir, to let the section stand just as it is and let men know that they are not to defile this great shrine of liberty with their pestilent presence for the purpose of corrupting the freedom of voters when they come to the polls.

MR. STUART of Doddridge. I am glad the gentleman from Monongalia has found out the unpardonable sin. (Laughter) It has always been a question, sir, a mystery to me, what that was. The gentleman has at last found it and it is bribery at elections. (Renewed merriment.) Well, sir, if it is such a heinous offence and one that is so grave a matter that treason would attach to it, I pray you why should we not inflict a punishment coequal to it —even assigning the punishment of death to it, if it is so grave, or confinement in the penitentiary? But after the party has paid the penalties the law assigned for it, why I hold he ought to have a right to come in as a citizen and as a freeman. I have even said and heard it said, and I believe it is a generally received opinion that—

> "While the lamp holds out to burn,
> The vilest sinner may return." (Laughter)

Now, we are making a Constitution that we do not expect to remodel tomorrow. This is a provision in our Constitution that may last for a century. I hope our work here may be handed down to posterity. Then, sir, here is the unpardonable sin that we have found out; we attach a penalty to it during life, although a man may become a good citizen and the community may be satisfied he is a good citizen. He has repented of his evils, he has paid the penalty attached to the crime; yet, sir, there is no mode by which this man can be relieved as long as a Constitutional provision debars him.

I will vote for the amendment; and then if the crime is so great, and I fully concur it is a grave offence, I am willing to attach to it a large penalty of imprisonment, say a year, or two years, or five years—but let that be decided hereafter.

MR. VAN WINKLE. I believe I will have to back what I said just now. The reasons assigned by the gentleman from Monongalia, which are pretty much the same as those that influenced the committee to report this as it stands, have satisfied me that if it was only during the conviction it would be of no effect. Now, it is certain that the legislature will fix penalties to it whether this clause stands here or not; but it seems to mark the contrast in it of an offence of this kind; it is proper it should be retained, the more so because it is depriving the offender of the very privilege which he has abused, and by abusing it has shown himself unworthy to hold. In this case, sir, it seems to rest on a very different principle from the other cases which are punished by the severest punishments, and which last, if they are less than death, for a great portion of the lifetime of the offender.

On the question of the adoption of the amendment of the gentleman from Kanawha, Mr. Hall of Marion called for yeas and nays.

MR. VAN WINKLE. I hope gentlemen will not call the yeas and nays on every amendment. We will not get through until next summer, if we are going to call the roll upon every amendment here while we are in fact in committee of the whole when the whole thing has got to be gone over again. It seems to me it is unnecessary.

MR. HALL of Marion. I want to test this matter and see what we are about. I must ask, sir, for the ayes and noes.

The yeas and nays were granted and being taken, resulted:

YEAS—Messrs. Brown of Kanawha, Dolly, Montague, Simmons, Soper, C. J. Stuart—6.

NAYS—Messrs. John Hall (President), Brown of Preston, Brooks, Brumfield, Battelle, Chapman, Caldwell, Carskadon, Cassady, Dering, Dille, Hansley, E. B. Hall, Haymond, Harrison, Hubbs, Hervey, Hagar, Irvine, Lamb, Lauck, Mahon, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Ruffner, Sinsel, Stevenson of Wood, B. F. Stewart, Sheets, Taylor, Trainer, Van Winkle, Willey, Walker, Warder, Wilson—40.

So the amendment was rejected.

MR. STEVENSON of Wood. I move we adjourn.

MR. VAN WINKLE. Let us take a vote on the section.

MR. STEVENSON of Wood. I will withdraw if gentlemen wish to stay here longer. I have an amendment to offer myself.

Mr. President, I wish to offer this amendment: "but a citizen, who has previously been a qualified voter of the State, and removed therefrom, and returned, and who shall have resided in the county, and be free from the disabilities, as aforesaid, shall be entitled to vote, after residing in the State six months."

MR. VAN WINKLE. I have no objection really to the substance of the amendment or the object of my colleague. But if we undertake to provide in this Constitution for every exceptional case, we shall have a document as long as the moral law. Now it is utterly impossible that you can make any general rule—and these must be general rules, or else the Constitution must be a code—but it is impossible to make any general rule that will not perhaps do some little injustice to some one. You cannot possibly anticipate all these exceptional cases. It is only when a thing is of frequent occurrence that it is worthwhile to provide against it. Where a thing happens only now and then—happens, indeed, very rarely—it does seem it is hardly worthwhile to take up the Constitution anticipating them; for when you have anticipated twelve you will be sure to find the thirteenth. We must adopt some practical rule in reference to these matters.

MR. STEVENSON of Wood. I can state very briefly, sir, my reasons for offering the amendment.

In the first place, I think the principle involved of sufficient importance to have it incorporated in the Constitution. It is but an act of simple justice to persons who may have been citizens of the State heretofore, and it requires but a few more lines, sir, to have it incorporated in the Constitution. Now it is wrong in principle to apply the same conditions to a man who has resided in the State that you apply to a man who first comes into the State. Now, sir, a person having been a citizen of this Commonwealth must have resided in the State at least a year and he may have resided in the State five years, or ten years, or twenty years; and yet you put him in the same position that you do a man who has never lived in the State before at all.

There is another consideration that seems to me of very considerable importance. It is reasonable to suppose that a man who has resided in the State heretofore for a year or upwards, must be tolerably familiar with the affairs of the State and with the working of its institutions. Very well; now, sir, if you give that man the right of citizenship within the period of six months you do no injustice to the people in the State; there is no wrong done to any one; and it may be a very considerable advantage to that man, and a strong inducement for persons to return to the State to wherever they find they may acquire all the privileges of citizenship within that short period of time.

I think, sir, there is every consideration in favor of the incorporation of that principle in the Constitution.

MR. HAGAR. It seems to me under the present circumstances as was said, there is need for that to be embodied in the section. Perhaps there are more than a hundred men who have moved from the State of Virginia, compelled to do it. I know a great many myself. Their lands are there and it is the place of their nativity, and they would love to be back there, but they are driven away; they have taken up their abodes in other States; and now for them to have to come back here and stay here two years or one year, before they have a right to vote, it seems to me under the circumstances it would be unreasonable. I am for inserting that in the resolution. Gentlemen think we have no room. It would not take much paper, and but little time to do it.

MR. LAMB. I imagine the gentleman from Boone misunderstands perhaps the operation of leaving the State. If the persons he has spoken of left with the intention of returning they do not lose their residence. If they have left the State with the intention of changing their place of abode permanently, from thenceforth, they ought to be considered as anybody else.

I would remark, too, in regard to the hardship of the case, that with a little ingenuity in imagining hard cases in reference to general provisions of this kind, I can keep up motions of this character for three weeks on almost any section of great importance. Any law that is to operate in general terms on a whole community must necessarily be frequently accompanied by cases in which they will operate hardly. It cannot be otherwise. Yet a Constitution must be necessarily composed of general rules. We cannot descend into all that infinite variety of detail in regard to particular subjects that you can when you go to make out a code—when you go to work and spread out the legislation that is necessary into one or two large volumes.

It strikes me, however, that even in this case there will be very little hardship, when we take into consideration the principle that a man who moves with the intention of returning is a citizen of the Commonwealth.

The amendment was rejected.

MR. POMEROY. I move we take a vote on the whole section.

MR. O'BRIEN. Mr. President, I wish to insert after the word "pauper" in the fourth line these words: "or who is under the influence of ardent spirits when he offers to vote." (Laughter.) I shall leave the question to the house without debate.

The amendment was rejected.

MR. SIMMONS. I move that the Convention adjourns.

SEVERAL MEMBERS. Let us take a vote on this section.

MR. SIMMONS. I withdraw the motion.

MR. HALL of Marion. I would ask that the section as amended be reported before the vote is taken.

The section was reported and afterwards adopted.

Mr. Simmons renewed his motion and the Convention adjourned.

VIII. THURSDAY, DECEMBER 5, 1861.

Prayer by Rev. James J. Brownson of Presbyterian Church, Washington, Pa.

Journal read and approved.

MR. VAN WINKLE. I have a proposition, sir, that I wish to submit to the tender consideration of the Judiciary Committee. It need not be read, sir; just refer it under the rule.

It was as follows:

"RESOLVED, That the Judiciary Committee inquire into the propriety of providing that every justice of the peace shall have jurisdiction of actions of debt, detinue and trover, when the value in controversy does not exceed one hundred dollars, and of actions on the case, except for defamation, when the damages laid do not exceed that sum, and the defendant resides, or not being a resident of the State is found in the district for which the justice was elected; and of misdemeanors and breaches of the peace occurring therein and punishable by a fine not exceeding five dollars or imprisonment in the county jail for not exceeding thirty days. And also of entitling either party to a civil suit, when the value in controversy or the damages laid exceed twenty dollars, and the defendant in a criminal proceeding when the penalty is imprisonment, to a trial by six duly qualified jurors, with an appeal to the circuit court in all cases which may be tried by jury, and when the value in controversy or the damages proved in a civil case exceeds ten dollars. Each justice to be a conservator of the peace for his county and authorized to take acknowledgments of deeds, &c., and to administer oaths and to discharge all other duties appertaining to his office, except the trial of causes as above, in any part thereof, and to reside or keep an office within his district."

MR. DERING. I have a resolution, I wish to have referred to the same committee:

"RESOLVED, That the Committee on County Organization, take into consideration the propriety of making the high sheriff and his deputies, ineligible after serving one term."

MR. CALDWELL. The Committee on the Executive Department, sir, have instructed me to make a report which I ask to be laid on the table and printed. And I am instructed by the minority of that committee to report a substitute for section nine, and ask that the same disposition be made of it.

The following is the report:

EXECUTIVE DEPARTMENT

"1. The chief executive power of this Commonwealth shall be vested in a Governor, who shall be elected by the voters qualified to vote for members of the general assembly, and at the time and place to be prescribed by law. He shall hold his office for the term of four years, to commence on such a day as may be designated by the general assembly, and shall be ineligible to that office for four years next succeeding his election, but shall not be eligible for more than eight years, nor to any other office during his term of service.

2. No person shall be eligible to the office of governor, unless he has attained the age of thirty years, is a native citizen of the United States, and has been a citizen of any county, city or town, forming a part of this State, for five years next preceding his election.

3. The governor shall reside at the seat of government, shall receive three thousand dollars for each year of his services, and during his continuance in office, shall receive no other emolument from this State or any other government.

4. The governor shall be commander-in-chief of the military forces of the State, shall have the power to call out the Militia, to repel invasion, to suppress insurrection, and enforce the execution of the laws; conduct in person, or in such manner as may be prescribed by law, all intercourse with other and foreign States; and during the recess of the general assembly, shall fill, pro tempore, all vacancies in those offices for which the Constitution and the laws make no provisions; but appointment to such vacancies shall be by commissions to expire at the end of thirty days after the commencement of the succeeding session of the general assembly. He shall take care that the laws be faithfully executed; communi-

cate to the general assembly at each session thereof the condition of the Commonwealth; recommend to the consideration of the members such measure as he may deem expedient, and convene the general assembly in extra session when in his opinion the interests of the Commonwealth may require it. He shall have power to remit fines and penalties in such cases and under such regulation as may be prescribed by law; to commute capital punishments; and, except when the prosecution has been carried on by the house of delegates, to grant reprieves and pardons after the conviction; but he shall communicate to the general assembly, at each session, the particulars of every case of fine or penalty remitted, of punishment commuted and of reprieve or pardon granted, with his reasons for remitting commuting or granting the same.

5. The governor may require information in writing from the officers in executive departments upon any subject relating to the duties of their respective offices, and also the opinion in writing of the attorney general upon any question of law, pertaining to the business of the executive department.

6. Returns of the elections of governor shall be made in such manner and by such persons as shall be prescribed by the general assembly, to the secretary of the Commonwealth, who shall deliver them to the speaker of the house of delegates, on the first day thereafter of the organization of the general assembly.

The speaker of the house of delegates shall within ten days thereafter in the presence of a majority of the senate and the house of delegates, open the said returns, and the votes shall then be counted. The person having the highest number of votes if qualified according to the second section of this article, shall be declared elected, but if two or more shall have the highest and an equal number of votes, one of them shall thereupon be chosen governor by the joint vote of the two houses of the general assembly. Contested elections for Governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

7. A lieutenant-governor shall be elected at the same time, and for the same term as the governor, and his qualification and the manner of his election in all respects shall be the same.

8. In case of the removal of the governor from office, or of his death, failure to qualify within the time that shall be prescribed by law, resignation, removal from the seat of government, or inability to discharge the duties of the office, the said office, with its compensation, power and authority, shall devolve upon the lientenant-governor, and the general assembly shall provide by law for the discharge of the executive functions in all other necessary cases.

9. A secretary of the Commonwealth, treasurer and an auditor of public accounts shall be elected at the same time and for the same term as the governor, their qualification and the manner of their election in all respects shall be the same, and their compensation and duties shall be prescribed by the general assembly.

10. The general assembly shall have power to establish a land office, whenever it shall be deemed expedient, assign the duties thereof to a proper officer, and prescribe his compensation, term of, and manner of appointment to office.

11. The general assembly shall have authority to vest the management and control of the works of internal improvement of the State, the disposition and investment of the fund arising therefrom, or that may be created for that purpose, in the governor, treasurer, and auditor and to prescribe their duties as a board of public works.

12. The manner of appointing militia officers, the enrollment of the militia, and how it shall be called forth for actual service or drill shall be prescribed by law, but no officer below the rank of brigadier general, shall be appointed by the general assembly.

13. Commissions and grants shall run in the name of the Commonwealth of West Virginia, and bear tests by the governor, with the seal of the Commonwealth annexed."

By order of the committee.

E. H. CALDWELL, Chairman.

The following is the substitute:

"9. A secretary of the Commonwealth, treasurer and an auditor of public accounts, shall be elected by the joint vote of the two houses of the general assembly, and continue in office for the term of four years, unless sooner removed. The secretary shall keep a record of the official acts of the governor, which shall be signed by the governor and attested by the secretary, and when required, he shall lay the same, and any papers, minutes and vouchers, pertaining to his office, before either house of the general assembly, and shall perform such other duties as may be prescribed by law.

The powers and duties of the treasurer and auditor shall be such as may be prescribed by the general assembly of the Commonwealth, and their compensation, as well as that of the secretary of the Commonwealth, shall be fixed by law.

LEWIS RUFFNER,

E. H. CALDWELL."

MR. VAN WINKLE. Is there anything before the Convention? If it is necessary for a motion I move that the report of the Committee on Fundamental and General Provisions be taken up and proceeded in.

THE PRESIDENT. The seventh section would be first in order.

The section was reported as follows:

"Sec. 7. In all State, county and municipal elections the mode of voting shall be by viva voce."

MR. POMEROY. I move to amend the seventh section by striking out all after the first two words and insert the following: "elections by the people, the mode of voting shall be by ballot."

MR. SINSEL. It seems to me the Constitution of the United States provides for a different mode of electing electors, and I think that amendment would conflict with the Constitution.

MR. BROWN of Preston. I rise to inquire whether the mode of voting prescribed in the section as it is reported would prevent a dumb person who is entitled to the right of suffrage from voting: I make this inquiry of the chairman of the committee, I am not properly advised as to the force of the section. If that would be the effect, sir, I think there should be an amendment in that particular, which I will propose at the proper time.

MR. VAN WINKLE. There is such a clause in the present Constitution where the voting is viva voce; but it goes on to provide that dumb persons may vote by ballot; and it seems to me nothing can be more superflous. If a dumb person votes with an open ticket, with his name written on, that is his mode of speaking; and certainly that is a viva voce vote to all intents and purposes. I would advise the gentleman, however, to retain his motion if he chooses to make it till this main question is disposed of.

MR. POMEROY. Though I have offered this substitute I do not deem it necessary to inflict a speech on this body, as our time is precious; and if the friends of that mode of voting will give it a quiet support and not discuss this matter, I will make no remarks in favor of this plan of voting, but leave it to the body, as they have discussed it freely outside the house, to take the vote on it and proceed to another section.

MR. STUART of Doddridge. I do not, sir, think we have anything to lose by a comparison of opinion on this question or any other. I have not the least hesitancy in giving my views on any question that may arise in our Constitution. I am in favor, Mr. President, of the section as it is, although I am not very tenacious about it. I hope the gentleman from Wood will not accuse me of "hankering" after the "flesh-pots" simply because I think the old mode of voting is better than the new mode proposed. In all my experience, Mr. President, I have never seen any good result from voting by ballot. I have been in various States that vote by ballot and I have never yet seen an election held there, with any party vote, that it was not known how men voted. They will use means for the purpose of evading it. I presume it is well known to every member of this Convention that they will get up their tickets in such form. One party will have their blue tickets, the other white or red, or long and short; and I have never yet seen a gentleman cast a vote in our neighboring States that it was not distinctly known how he voted.

I like this independent way of voting—coming up and declaring how we vote. It seems to me it inculcates principles of independence. One illustration is sufficient to satisfy my mind that the section as it now stands is the best. I can only refer gentlemen to our vote last spring. Suppose, sir, we had cast our vote last May, on the ordinance of secession, by ballot; we never would have known who amongst us desired to break down and destroy our government. We could not point them out if it had not been for our mode of voting. Now such another occurrence may never arise, but as I can conceive of no advantage to be derived from this ballot voting, I see no necessity for adopting it; and such another contingency might arise, and then we will be posted and prepared for it. We will know who the enemies of our country are, and who are not. This is a sufficient reason to induce me to vote against the amendment of the gentleman from Hancock.

MR. BROOKS. I have been instructed by my constituents to give my influence to change the system of voting; and while I have no particular objections to offer to the system myself as an individual, yet I feel disposed to do my duty to my constituents; and as experience has been adverted to I suppose it would be nothing amiss for me to give my experience. When I say I have no objections as an individual to the system of viva voce voting, I mean I am willing that everybody should know how I vote and whom and what I vote for. But I know that there is not quite that amount of independence in our country that there should be. I know that every man in our land often has not the fortitude to go under all the circumstances and declare freely and declare calmly his choice of delegates to any legislative department, or officers to fill any department in our government whatever. And while there has been an isolated case in which some advantage might accrue by a proper knowledge of how men vote, there have been numerous cases in which disadvantages have accrued.

I believe the design of voting is to get an expression of our citizens touching their preference in public offices; and I believe that expression should be as much as possible untrammeled and free and independent. And while some men are prepared to give such a vote under any circumstances, others are not. And here I would mention a case or two that I have witnessed myself, that seem to me to declare that our old custom of voting is not the best to get a clear expression of the view or wishes of individuals or our people, touching their representatives or rulers.

It is very frequently the case in the relations of life that a number of individuals are dependent upon one individual; and being dependent upon that individual, that individual becomes a candidate for office; and for the want of that independence that men should possess, those individuals are influenced by their relations to vote men into office that really are not their choice and sometimes would be the last in their choice if they had independence enough to express their preferences, their wishes and desires touching their rulers. For instance, in the history of my travels I have been in one of our back western counties. A few men, perhaps as many as three, were candidates for the legislature. In those counties merchants did a large credit business. One man had the names of a great many voters of that county on his ledger, some of them considerably in debt. As he passed around he made it known amongst those individuals that if any of his debtors should vote against him a suit in law should be the result, and that he would collect in the most hasty process possible. The result was that numbers of them, who expressed themselves to my own knowledge that he was not their choice, but simply from fear of cost and trouble by hasty collections of debt, voted for him, and that man was elected.

Well, now, that threat did intend something I have knowledge of. There was one man of the number to my knowledge, who had fortitude enough under the threat to go to the polls and declare his independent choice; and before ten days had expired a writ was served for debt on that man. I do not go further back than a few weeks or months for other examples. I have been amongst men at the polls and hearing men vote. I remember hearing it remarked, by an individual, such a candidate looked such a one out of his vote today. I then noticed that that candidate named had taken a position near the table where the votes were recorded and would look in the face of every voter as he came up; and before the sun had gone down more than one, two or three individuals came to me and told me, I would not have voted for that man but the relation I sustain to him makes it my best policy to do so from the fact that he was there ready to see who voted against him and who for him.

Now I presume if the plan of voting had been for the individual voting to have prepared his ticket, advanced to the ballot box, had his named recorded and his ticket dropped in, that candidate would not have known who voted for and who against him, and thence a different result would have been produced.

With this view of facts, my impression is, sir, that it will, to say the least of it, be as fair if not a fairer way of obtaining a fair and independent expression of men's wishes touching their rulers or legislators, as the present mode of voting. Hence, as instructed, I shall doubtless give my vote for the ballot box. I have seen some elections go off—and been a little more successful than my friend from Doddridge—for I have seen elections by ballot when I could not tell, nor any other individual could tell I conversed with, who voted for this man or that man, and yet there was a man elected. (Laughter) Hence, it is not always ascertained whether men vote for A, B, or C, when they cast their votes at the ballot box.

I am in favor of the ballot box.

MR. PARKER. I agree with the gentleman from Upshur. Whatever may have been our difference of opinion in relation to any condition to the right of voting—whether some of us thought the payment of taxes should be a condition of voting or the contrary—I trust we are agreed that when that party comes to the ballot box that he votes freely whether high or humble. The only question arising seems to be which of the two modes here proposed will be most likely to secure the greatest degree of freedom in voting. Now, I admit, Mr. President, if all the legal voters in our new State could be practically equal in all their surroundings, standing as compeers in all respects, I would go for viva voce voting. That would meet our case then. I should go for it. There is a good deal in it to recommend it, among equals; but, in the nature of things that equality can never exist. It has never existed in any community. It cannot exist. It is impracticable. Then the question is, with all these inequalities and differences in circumstances, which is best? I have had some experience in some of the northern States where capital is aggregated and manufacturing is carried on by large aggregated capital and in those States—in the city of Lowell for instance, where some fifteen thousand operatives are dependent for the support of themselves and families on their employment by these companies; I have seen it—it would be by ballot, open ballot, but never by viva voce—the espionage and dictation was carried to that extent that the agent or overseer would come and stand at the ballot box; and that influence was carried to that extent that the legislature took it in hand in Massachusetts, and made it secret ballot—every man's ballot to be enclosed in an envelope and that envelope sealed—should not carry it open, but it should be in an envelope and that envelope sealed up. Well, in that way they obviated it. If there were two ballots in an envelope, they threw them both out. Well, that cured this difficulty—that, I know.

If every man in our new State owned his farm and was about equal, we could get along very well viva voce. We are making a Consitution that is to reach forward; and let us look for a few minutes at the resources and nature of our new State. We all agree that its great controlling interest that is to give it prominence is manufacturing and mining. Well, now, throughout the country we find that manufacturing and mining, almost all, is carried on by associated capital. The operatives depend for their daily subsistence and that of their families upon what they get from these associated companies of capitalists. That is the state of things that is to take place ahead in our new State. Well, now assuming that these great interests are to be perhaps (and certainly, as I think) the predominant interest of the State, why to leave it viva voce as I have seen it over there in the North it seems to me would be a mere farce. It would be worse than giving whiskey and money to get votes. For that reason, Mr. President, I shall feel it my imperative duty to go for the amendment.

MR. POMEROY. It was with a view of saying something on this question that I offered this substitute. We are here, as has been said on another question, as the people; we are the representatives of the people; We are here to carry out their wishes on all these matters as far as we have knowledge of their wishes. I am here representing a people that are decidedly in favor of a change in the mode of voting. They desire to vote by ballot. As has been said by the gentleman from Upshur, I believe I have no tenacity myself in regard to it. I would as lief vote with the candidate I was voting against sitting at the table as not; but I imagine all men are not so—I know they are not so. There is an influence brought to bear on these men by this system of voting that prevents them from a fair expression of their opinions through the ballot box. The candidate may be wealthy or may have a great many men dependent upon him for their daily bread at the time of election.

He goes there and places himself there to take knowledge of those men as they deposit their ballots. He may even make threats beforehand what he will do in case they go contrary to his wishes.

But there is another great objection, too, in this thing. A man that is acting as a demagogue, wanting to keep down the full expression of the people, goes to the ballot box at a certain hour in the day and then goes out and tells men, sometimes, truthfully and sometimes falsely, that such is the state of the vote and that this man is going to be the successful candidate, the man who will collect your taxes and serve writs on you, and you had better vote for him. And in that way these men are controlled and influenced to vote for the man that they believe will be the successful man although their wishes are the other way. There are numerous examples of this. It was said by my friend from Marion that the attorneys of their county have all gone down to Richmond, expecting to be President of the Confederate States as soon as Jeff. Davis is established. Well, this idea of men being successful has a great influence. They did that because the rebellion would be successful. Well men vote because they think it will be on the strong side.

This system of ballot prevails almost everywhere in the United States. It appears to have worked well. They have by the practical workings of the system proved that it works well. Let me say too in regard to the experience of my friend from Doddridge. He says these politicians get up their tickets in different ways so that men know exactly how a man votes—some tickets long and some short, blue and white, and various colors. I believe that is all true; but when a man goes to vote he has the ticket folded up so in his hand that no man can see his ticket until he places it in the hands of the officer. The officer cannot go out of the house and tell every person how that man voted, and consequently I do not see the weight of his argument. It is not so much matter if it is known after the result is known. But the gentleman uses an argument of this kind, that if we did not vote by ballot we would never have obtained a knowledge of these secessionists. Let me ask if he considers that any very valuable information? (Laughter) I know more about the secessionists than I care about knowing. I do not know all the secessionists in this country, but I think there are more in it now than there will be a few days hence. And I hope the day will come when there will not be any. I would rather not to have known our men in our county to have voted this way than to have known it; I have such feeling of abhorrence against them, I have no special desire to have knowledge of that kind that appears to be so valuable to my friend from Doddridge. But if we had voted by ballot, even I think where there is so much corruption, in the city of Richmond—where after voting for men as Union men and electing two out of three to represent them in the Convention that passed the secession ordinance, yet when they came to vote on the ordinance there were but four men had the firmness to go up and vote against that ordinance. This day there are hundreds in that city, good Union men, but they would not dare to vote under the present system against this ordinance. It is said, that if it had not been for the viva voce plan of voting Virginia would never have voted herself out of the Union. I do not know whether that is true or not. My friend says he believes it, and I have no doubt that is a pretty general belief—that she would not have voted out. They could not come up and vote with the influence and compulsion against them, when under their system every man's vote was known.

As I have already said, I have no tenacity, as it regards myself. I make it a matter of duty and conscience. I vote for a man the best qualified and if the other candidates see fit to mark how I vote, let them do it. But I believe this would give the fairest expression of the opinion of the people. I believe it is the mode adopted perhaps in nearly every state in the whole United States, with a few exceptions; and it is far preferable—it is the wish of the people—it should be so. I understand from members here—with some I have conversed—that they have no particular tenacity about it but that it is the wish of their people. Then if it is the wish of the people, and a better plan than the other I am in favor of adopting it. This is an age of improvement and we ought to make improvements here. There is wide room for some improvement; and I think this is one of the improvements we ought to make, and one of the changes we ought to engraft in the Constitution of West Virginia.

MR. DERING. I rise for the purpose of saying that I am in favor of the amendment, to vote by ballot. So far, sir, as I have heard any expression of opinion on the part of the people of Monongalia county, they are decidedly in favor of that mode; and I think, sir, if we wish the security of the ballot-box, that that is the mode we should select. I think, sir, that in doing so—in making the ballot box pure—we inaugurate a [illegible] which will perpetuate and maintain good government, [illegible] without the purity of the ballot-box, our government [illegible]emain pure, will not be perpetuated. I consider, sir, that voting by ballot is the only way to get a free and independent expression of the electors. By voting by ballot, sir, you leave a man free and untrammeled. He can go up and deposit his vote and no one knows whom he votes for unless he sees proper to disclose the fact. Leave then the citizen untrammeled; let him go to the ballot-box and vote the independent sentiments of heart, and you will preserve the independence of the citizen, and throw around the ballot box a purity that we cannot attain by the viva voce mode.

I, sir, did not rise for the purpose of making a speech, but only for the purpose of indicating the sentiments of the people of Monongalia county so far as I had heard them on this subject, and I think from the general "concurrence" in opinion here that there seems to be on this subject, that there is no need of arguments. They are so plain and potent that they must strike every mind as favorable to this amendment.

MR. PAXTON. I desire merely to say that I concur heartily in the amendment proposed—especially after what has been said here by these gentlemen, and more especially because I believe this Convention is already prepared to settle the question by a vote in its favor. Whilst upon the floor, however, I will state a fact or facts, that may be of some interest and may have some influence in regard to the manner of voting. In the states of Missouri and New Jersey, I am not advised, I presume however the mode is by ballot.

MR. VAN WINKLE. In New Jersey, by ballot.

MR. PAXTON. In the States of Virginia, Kentucky, Georgia and Oregon, the viva voce system is prescribed. In the two latter, their Constitutions although prescribing that mode gives their legislatures authority to change that for the ballot system; and I think it not improbable, although I do not know the fact, that they may have done it. However, in every other state of the thirty-three, the constitution of each state prescribes the ballot system, of voting. We thus have the almost unanimous verdict of the people of the United States in favor of that system; and I hope, sir, in the face of that we shall not now adopt a contrary system, because perhaps (and perhaps only) because having been accustomed to it always, we have natural prejudices in its favor. I hope, sir, we may be allowed to profit by wisdom and experience even though they come from beyond the border of Virginia; for, sir, there is wisdom outside of the limits of our own State, and it is no disparagement of the State to say so.

MR. BATTELLE. I do not intend to say much, sir, but simply this: that I very heartily favor the amendment proposed; in the first place because I believe the people whom I have the honor in part to represent are in favor, of it, and because I believe it is the best mode, and because I am heartily in favor of it myself. I think voting by ballot very greatly contributes to the freedom of elections. It has been already stated that in the various relations of life there will be more or less from various causes a feeling of dependence one upon another; and I have long been satisfied from years of observation indeed, that the present mode of voting here does give an undue power to men of wealth, influence and position —especially to party leaders—to unjustly control the exercise by others of the right of franchise. We may say this ought not to be so, that men ought to vote their real sentiments in the face of all intimidations; but that I judge does not alter the fact that they really do not. It is unquestionally the case, sir, in these very times, perhaps in portions of our own State as well as in other communities; where it would require a great deal of firmness and patriotism and independence—more, perhaps, than most men possess— to go up and squarely in the face of a large employer or prominent party leader, vote directly opposite to what the voter knows to be the sentiments of that individual. There is no question in my mind but that consideration has time and again controlled and ruled the elections of Virginia, as well, sir, as elsewhere where that mode is employed. I am for making this right free, to every citizen to exercise without let or hindrance his own choice, without dictation either expressed or implied.

In reference to the remarks made by my friend from Doddridge, and my friend from Hancock, touching the vote of this State on the ordinance of secession, I think it affords a most admirable illustration of the matter in point, though I would not make exactly the same use of it as the first named gentleman did make. I think it highly probable had the mode been by ballot, Virginia would not have today occupied the position she does occupy. There is no other theory upon which I can account for the sudden transformation from the vote in February to the vote in May except this domineering influence of political leaders, and other influences at the polls, restraining and controlling and dictating that vote. I would take away that temptation.

There is another consideration, however, which has not been mentioned, and it is the comparative expense of the two modes, and comparative speed. I am not familiar enough with the details of voting to give, perhaps, anything like an approximation to the exact proportion; but when you have a long string of candidates to be voted for, say, from six to eight or ten, as is the case in some elections, the voting viva voce is, we all know a very tedious way, and the voting by ballot is simple and expeditious in that regard. It may be indeed that the counting up after the vote is over is longer by the ballot than viva voce; but the taking of the vote is by the ballot method vastly the more expeditious, and very much less expensive. I think, sir, that should this Convention fail to incorporate the principles sought to be incorporated by this proposed amendment, they would fail of one modification most essential and one required by the nature of the case and the known voice of our people.

MR HAGAR. From the past and present only we can judge in reference to the future. As you know, I live in Boone. Some of you know that I live very near the centre between Chapmanville and Boone Courthouse. I am very confident from living all my lifetime in that neighborhood, and being acquainted with almost all the people in Boone county; that if the vote had been taken by ballot there would have been at least one hundred or one hundred and fifty votes in favor of staying in the Union. At the Courthouse, as most of you know there was but one vote given for it, that is in favor of the Union, and it was with great difficulty that man got away with his life. It was declared previous to the election that any and all who should vote for the Union should be hung forthwith on the public square. The Union men talked among themselves and agreed, or at least partially agreed, that some forty or fifty would unite and go there and vote anyhow for the Union. But when they found a drunken mob arrayed against them there, their hearts failed them and the treatment the first man received deterred the rest and there was no other vote given for the Union there. Some twenty, perhaps, went off without voting, and the others were forced to vote for secession. These things grew out of the power invested in the hands of a few there. They have monopolized the places—merchants, lawyers, prosecuting attorneys, and clerks.

At Big Coal river next to Kanawha, at the February election they gave a very large majority in favor of the Union—perhaps there was not one dissenting voice. In May there were about one-third, or nearly so, for secession. Why? Because it was packed. A leading secessionist, a William Thomson, ruling the principal part of that county controlled the election. The result was that all the votes at one precinct were given in favor of secesh principles and practices, and half at another, ruled by two prominent secessionists. Just across the way, over at Chapmansville in Logan county, there was only one man there out of fifty that wanted to vote for the Union dared do it. The result was it was with great difficulty he saved his life by having the name erased. If the vote had been given by secret ballot the great probability is, Boone would have gone strong for the Union and Logan would probably have nearly tied off. Instead of that there was 450 of 700 for secession in Logan.

I am in favor of the ballot box.

MR. STEVENSON of Wood. I am very decidedly, sir, in favor of the amendment proposed by the gentleman from Hancock. I believe, sir, I will not urge any consideration in favor of that amendment that has been already urged, at least not at any length. There are a few considerations, however, sir, in favor of this ballot system of voting which in addition to what has already been said I would like to trouble the Convention to hear.

Before proceeding to that, Mr. President, I will state that I hold in my hand a petition signed by between two or three hundred citizens of the county which I have the honor in part to represent here, in favor of this system of voting—voting by ballot. The petitions are indicted in respectful language to the Convention, and as far as I have examined it, and as far as I am acquainted with the signers, a number of them are prominent, and I believe all of them respectable citizens of the county; and if there is no objection on the part of the Convention, I would like to lay the petition on the table. It is not just in order now, but I will just read the heading and dispose of it in that way:

"To the Constitutional Convention, assembled in the city of Wheeling:

"The undersigned, citizens of Wood county respectfully ask your honorable body to insert a provision in the new State Constitution requiring all elections by the people to be by ballot." (Handing the petition to the secretary.)

It seems to me, Mr. President, that the strongest argument that could be adduced in favor of this system is found in this fact: that in all those states where that system prevails—and as has been shown they form a large majority of the states in the Union—it gives almost universal satisfaction. It works well, and I believe there is not a single State—at least not within my recollection—that having once adopted the system of ballot voting has ever changed from it to any other mode. Some of them have perfected the system, have improved upon it, as they have in Massachusetts and some other of the New England States, by adopting a more perfectly secret ballot.

Now, sir, this is a practical argument in favor of that mode of voting, and of all arguments that can be used in favor of this or any other subject, these practical arguments are of the strongest character. It seems to me that is an unanswerable argument in favor of this system of ballot voting. Now what works well in New England, New York, Pennsylvania, Ohio and the great Northwest, will work equally well in the new State of West Virginia; and I think we will make a very grave mistake if we leave this Convention without inserting it as a part of the new Constitution; because I believe it is demanded by a very large majority of the voters within the limits of the proposed new State.

If there is any one privilege which is exercised by the American citizen that ought to be specially and carefully protected it is the exercise of this right of suffrage. A man should vote untrammeled; he should vote freely; he should vote without any undue influence from any man or from any party; and if he cannot do that, sir, or if he does not do it, so far as that great right is concerned it is partially a failure. Now I undertake to say that that can be done, but I will say what is a stronger proof of my position, that it is not so under the present system of voting. Now, that has been alluded to already, and I ask any man to call up what has taken place under his own observation and ask himself if he has not seen it in hundreds of cases where men are frightened into voting—and frequently against their conscientious convictions—on different questions. Now, sir, we have the fact there, and you may bring as many Virginia abstractions as you please—and they are the most abstract of all abstractions—and pit them in favor of viva voce voting and it will not affect this practical proof when the right of franchise is exercised silently, quietly, independently in that way, it is then, sir, that the language of the poet is true. It is a power which

> "Falls as gently as the snowflake on the sod
> But executes the freeman's will
> As lightenings execute the will of God."

But, sir, there is one consideration that has not been alluded to at all; and I think it a very strong one in favor of this proposition. Where are your people to come from that are to settle up the valleys and the mountains of this new State? Where are they to come from? The natural increases of our population will not supply them unless the list of old bachelors is reduced very rapidly (Merriment). Now, sir, the increase of that population is to come from those States—the great bulk of it must come from those States—where this system of ballot voting prevails and where it is popular; and the people will travel from those States to the other States which have adopted the same system of voting. Now if you can adopt a system here which will be—as has been shown here clearly, I think—of decided advantage to the voter and benefit to the State, at the same time furnish an inducement for the introduction of a population of the right kind, and with that population capital to develope the resources of the State, I ask if this is not a very strong argument in its favor? Why, sir, here is timber in our mountains, ore in our hills, coal and oil beneath the surface of the earth, and natural resources as great probably as are to be found within the same limits anywhere in this broad land, and there they lie undeveloped; they are worth nothing to the State. You may put it down in your reports and speeches about how much the State is worth—she has so many millions of feet of timber, or tons of coal or iron or gallons of oil. Why, sir, your mountain of coal or iron is not worth as much as barren sand or soapstone until capital and labor are brought into the State to develope it and give it such shapes as will make it convenient for the comfort or use of man. Then it will be a source of value, yet not till then. Now one of the ways to introduce that capital is to invite that class of population; and you cannot get them unless you incorporate into the Consitution these ideas of progress in which the people of other States are in advance of us—not as rapidly as desirable unless you incorporate this and other provisions of a liberal character in the organic law of the State.

Now, there is another reflection—I do not wish to detain the Convention, but it is this. It occurred to me very forcibly yesterday in reading the Governor's message because he has thought the matter of so much importance as to allude to it in an official document and put it upon the records of the country as a fact that can be referred to by the generations to come after us—and that is this: that those men over there in the city of Richmond (now I believe they have begun to think they will be "food for gunpowder", and have emigrated to Nashville)—but these men in the city of Richmond and the South who have conspired together for the destruction of their country—that country which has enriched and protected them—have not only done that but they are now conspiring and perfecting measures for the destruction of popular liberty itself. They are now devising plans to abridge this very right of suffrage, that will not only cripple the citizen in the exercise of it but in some cases absolutely deprive him of its exercise altogether. Now I ask in consideration of this fact whether it is not proper and politic and judicious and right that the people here in northwestern Virginia who have been loyal to their country and I hope and trust in God and firmly believe will remain loyal to the end to that government which protects them, and which acknowledges too the principle on which this new State is to be organized, that the people govern—whether it is not proper that that State should go in the other direction, by perfecting and protecting these popular rights—not by introducing a system to corrupt politics, not by a licentious use of this great privilege, but by properly guarding them all, and seeing that after they are properly guarded the citizen is perfectly protected in the exercise of them. Now, sir, I think that is a very strong consideration in favor of this proposed policy of voting by ballot.

The only additional thing, gentlemen, which I have to say, Mr. Chairman, is this: that in the matter of economy, so far as I have been able to investigate the subject, the method of voting by ballot is decidedly cheapest. Now you may take our local district or precinct elections, and in some cases we elect from six to twelve persons to fill offices. I do not know but it sometimes goes beyond that. Now it will require from four to eight or ten persons to conduct the business of election in that particular district under the present system of viva voce voting. Now you take in those States where the system of ballot voting is adopted the same number of persons to be elected, and the election will be conducted by a much less number of officers and of course at a less expense. If now the aggregate amount paid out at these district or precinct elections is very enormous, and if the system of ballot voting with all the other advantages which have been urged in its favor and not contradicted, is more economical and would save several thousands of dollars annually to put into the coffers of this new State, I urge that as an important argument in its favor.

I have but one more word to say, and that is in reply to my friend from Doddridge. It is in reference to the abuse of this system of ballot voting. I may say here that it is impossible we can adopt any system that will not be liable to abuses; nor do I understand any gentleman as urging this as entirely free from them, but as being freer from them than the other system, having less disadvantages, less difficulties and fewer objections. Now, sir, I have observed to some extent the voting in States where this system prevails and I must differ from my friend in what he said in regard to the vote of persons being known. That is as a general thing not the case. They may be known sometimes; but if a citizen is disposed he can vote so that it will be almost impossible even for the officer of the election, to determine how he voted. He may take any of these differently described tickets the gentleman alluded to; they may be black or blue, or white, or long or short, or round or oval or square; or the voter may get a ticket just printed like those of the other party, or he may take a piece of blank papers and write his name on it; but so far as that is concerned, I will just say that I believe that the practice of printing tickets in different colors and lengths has been abandoned almost universally and nearly all the tickets are printed alike, so that the Democratic and Republican tickets and Union tickets are pretty near the same shape and size and color, however much the parties may differ in these respects (Laughter).

MR. SINSEL. The people I have the honor to represent, as well as myself, are decidedly in favor of voting by ballot, having seen and felt the evils resulting from viva voce voting. It is not an uncommon thing for a man there to have persons largely indebted to him; and they demand of these persons to vote for them, if they do not they will institute suit against them; and it is frequently done. Last winter, when the contest was probably the hottest and severest we ever had in the county of Taylor, Union and Disunion, the day after the election there I presume there were twenty suits issued against Union persons that failed to vote for the men that desired their votes. And in addition to that it not infrequently makes enmity between friends for life. Here are two persons running. They both claim me and insist on my voting for them. I cannot vote for both of them. One may be my personal friend and the other I may care less about, but I see he is more competent. I vote against my personal friend, and the result is I have offended him, and not infrequently for almost an age. In addition to that it is not uncommon for the proprietor to go round among his employees and say, my friend is running, now you must vote for him. They look around them and they are almost entirely dependent on him for their daily bread, and almost urged by the necessities of supreme need, they are compelled to vote against their will or else be thrown out of employment.

So I shall vote for the amendment.

MR. LAMB. I want to make a speech on this subject, but trust the Convention is not much alarmed at the announcement as I can assure them it will be a very short one.

I am decidely in favor of a vote by ballot. Ohio presents herself on that subject a unit. But the indications are such that an overwhelming majority of the Convention is on the side of the question as to render it unnecessary that there be any further discussion of it.

(Cries of "question")

MR. BROWN of Kanawha. I desire to say one word, and that, too, notwithstanding the indications may be as the member has said, that there is an overwhelming majority in favor of voting by ballot.

I have listened, sir, with much attention to the arguments of gentlemen who have discussed that side of the question, but failed to hear any arguments touching the real merits of the case. I have listened attentively if I might hear from advocate of the ballot system something that would satisfy an inquiring mind anxious to arrive at the merits of the case; but I have listened in vain. It is said that the ballot system works well in other States but what evidence have we of the fact? We know if the public press is to be relied on that the frauds in elections where that system prevails have grown so frequent and common as to have acquired distinctive names, such as "stuffing the ballot box"; and indictments for double voting at the same elections are so numerous as to show something of the evils attendant on the system.

It has been said that men are overawed and afraid to vote their preferences at a viva voce election. But who can point to an instance in the history of Virginia where the votes have been suppressed or increased or corruptly misapplied? Such a thing would be impossible in the presence of the parties most interested in it, and the vote proclaimed publicly. I was reared in Virginia and have attended many elections at different places in the State and I have yet to see a fraud practiced in an election or—

THE PRESIDENT. The hour for taking a recess has arrived.

MR. BATTELLE. I move that the time be extended to allow the gentleman to complete his remarks, and then take the vote.

THE PRESIDENT. The gentleman may proceed, there being no objection.

MR. BROWN of Kanawha—(resuming) I have yet to see a fraud practiced in an election in Virginia, or a voter quail before the presence of some august citizen with whom he differs in the high prerogative of voting.

The argument against viva voce voting and in favor of the secret plan seems to be predicated on the idea that the people are such cowards and slaves that they will not dare to come up to the polls like men and speak aloud their preferences, but will truckle before the frowns or displeasure of some arrogant person present. My experience is that the contrary is true, and that on an election day in Virginia, more than any other, the poor man feels his consequence, self-respect and equality with the highest and richest in the land, and when he votes it does him good to show it in the independent tone in which he proclaims aloud when called upon to cast his vote. The viva voce system tends to encourage a manly independence in the voter, and leads him to prize the privilege of voting more highly—a most important consideration in an elective government. The one system appeals to the voters as independent freemen, the other appeals to their fears and sense of inferiority. The one encourages a sense of equality and self respect; the other suggests the want of both. The one is a Virginia system, long and dearly cherished by our people; and I cannot consent to part with it without a better reason than I have yet heard from the advocates of secret ballots.

The right of suffrage is a fundamental right to every freeman. Our whole institutions are based on the principle that the government is in the hands of the people; and it seems to me if there is anything that we ought to encourage and impress on the minds of the people, it is the great right that belongs to them, that they should never be ashamed to own and proclaim to the world that it is their right. I know no right that a freeman has in this country that he does boast of as much as the simple fact that he has the right to go and choose all the officers of the government. And now, sir, that you shall institute a policy, the very basis of which is that he is afraid or ashamed to come up in open day and put his vote in the record, seems to me ignores the very groundwork of our institutions.

These, sir, and other reasons must influence me to cast my vote against the amendment; and I do hope we will stand by that fundamental principle of this old Commonwealth, and that as we have retained the name, we will also retain the distinguishing feature of Virginians—that we have ever voted open-mouthed before the world.

MR. STUART of Doddridge. I desire to propound the question, sir, how it is that you are going to determine when voting has been corrupt? If you can always rely on the judges of your elections who receive the tickets and know that they are pure men, not liable to do wrong; it may be perhaps safe; but how are you going to determine when corruption takes place? Or what way are you going to secure yourselves against this evil? Now, sir, if I attached the importance to this thing that some gentlemen do, I believe I would go for ballot voting. If I thought it was going to disembowel our hills of their minerals and make us all rich, because we voted by ballot I would go with you. But I presume a gentleman emigrating to this State will never ask the question. I would not ask it myself, and I have no idea it has that effect. But it does seem to me the disadvantages accruing from ballot voting are more than enough to counterbalance the good it may effect. I confess I have greater confidence in the high-toned, independent, moral character of our people than some of my friends seem to have, because I must say in all my experience when I have been a candidate, I have never yet seen a solitary man influence another man's vote. Never have. That is an independent character that seems to be stamped and inherent in the principles of Virginia; and I am loth, sir, to leave it, from the fact that I cannot see any good growing out of, or any evil to be removed by, a ballot vote.

Now, again, suppose illegal votes are put in the ballot box, I want to know how either party would have an opportunity of contesting the vote. It is true you can purge the polls and strike off and cast away these ballots which are put in by parties who have not a right to vote, but you do not know who they were and you cannot determine whom it was that they cast their votes for. Now, sir, as before remarked, if we propose any remedy by which we can keep pure the ballot-box, and ascertain and detect any corruption on the part of the judges of elections, then I am ready to adopt it, but until then I must oppose the proposition now before us.

MR. STEVENSON of Wood. I would like to make just one single remark by way of explanation and reply to the remarks of the gentleman from Doddridge.

MR. VAN WINKLE. I shall be compelled unless the question be taken to move that we take a recess.

MR. HERVEY. I move to adjourn.

MR. VAN WINKLE. If the Convention will take the question I am willing to remain for the purpose, but if this discussion is to go on, there is nothing ever gained by a transgression of the rules.

The vote was taken and the amendment adopted.

The Convention then took a recess.

THREE-AND-A-HALF O'CLOCK, P. M.

MR. STUART of Doddridge. Mr. President, we fixed the order of the day at twelve o'clock. I suppose it would be in order now to call it up—that is the report of the Committee on Boundary. It is not one of the regular committees and does not come under the general rule, still I make the motion to take it up and consider it section by section as we do reports from standing committees.

The motion was agreed to.

The first section was reported as follows:

"RESOLVED, That in addition to the thirty-nine counties, mentioned at the close of the first Section of the Ordinance convening this Convention, the counties of Pocahontas, Greenbrier, Monroe, Mercer, McDowell, Buchanan and Wise, be included within the boundaries of the proposed new State."

MR. LAMB. Mr. President, I move to strike out the counties of Buchanan and Wise. I am willing to adopt a natural and proper boundary for the New State, but my objection to those counties is that a natural and proper boundary does not include them. It would be in fact constituting an additional "panhandle" on the southwest, and I am opposed to all panhandles.

It is impossible to restrain this matter in any other way than by an inspection of the map. If these other counties included in the first section are incorporated there will be a natural and proper boundary on the Southwest as well as on the Southeast. The new State would then have a mountain boundary throughout, wherever it bordered on secession dominions. It may be that with the difficulties we are naturally to expect having a mountain boundary throughout the length of the new State will be a matter of great, perhaps vital, importance to us. As those two counties lie on the map, there are a mere excresence it seems to me to the natural and compact form of the new State; and I know no particular reason why they should be included.

I hope it will be the pleasure of the Convention to strike out those two counties.

MR. STUART of Doddridge. I am not very scrupulous, Mr. President, about the two counties indicated by the gentleman being stricken out of the first section here. I believe that question was before the committee, who argued that from the natural position and the natural boundaries of these counties indicated here that it really was for self preservation, for the preservation of our State, that we should include them. The two counties indicated by the gentleman are not included in that category. They are not exactly within the mountain range, I believe, of some other counties, but so far as identity of interests is concerned, they seem to be identical with us. Here I see in table A, the county of McDowell, with a white population of 1,535, with no free negroes and no slaves—which is an anomaly in Virginia; and it does strike me, sir, that these counties are identified with us in every particular. They lie contiguous to us, the only objectionable feature is that they run down there into a kind of panhandle. I am not for excluding myself because it does not make a very nice boundary for the new State; and I think their interests are identified with us and that they desire to be a part of our State—which I have no hesitancy in saying they must desire from their location, identity of interests, habits and everything else.

But, sir, I do not propose to detain this Convention any length of time in a discussion as to the merits of taking in these two counties. There are other vital questions that will arise, I presume, on other points.

MR. BROWN of Kanawha. I desire to say a word on this motion. The only reason I have really understood from the gentleman from Ohio for striking out these two counties is his objection to panhandles. Well, sir, that is a strange reason to come from a man who lives in a Panhandle. It would seem the gentleman was sick of his place of residence, and the form of the place that he has chosen as his habitation. Now it seems to me that there is a real and obvious reason why these two counties should be included in this boundary. If you will begin on the Ohio river, ascend the great Sandy, you traverse up the county of Wayne till you come upon the county of

Logan and the next county in the rear and above the county of Logan is the county of Buchanan, and then on with the branch of the Sandy that runs up the edge of Kentucky and terminates in the county of Wise—both forks of the Big Sandy river do—and form the Southern boundary of the counties of Wise and Buchanan—you ascend those rivers till you reach the mountains, and when you terminate on the mountain range at the head of them you are on the southern border of these counties. Now I ask the gentleman—these people are a mountain people, without slave poulation as this census shows—the county of Buchanan has but 30 and the county of Wise but 66, showing a smaller proportion of negro population than any other portion of the State for the same extent of territory and number of people. Well those people are identified with us in interest, in habits, in the formation and locality of their country; for all the waters that drain those counties flow right down into the Ohio, and the mountain range that is their southern border is the range that divides the waters of the Sandy from those of the Clinch, that runs down into Tennessee. Then geographically why should we not take them in? Why take in any county West of the Alleghanies? If they are not Western Virginia there is none. If we follow the waters on which they live until they debouch into the larger streams, to the great markets of the West and make this the guide to judge whether they are Western Virginia people or not, if they are not, who are? Now if you exclude them you make this people cross a mountain range to seek intercourse with a people from whom they are naturally separated. It seems to me it would be an actual injustice to our friends and relatives to make a discrimination against them when the only reason assigned is that the gentleman is tired of panhandles. Why, sir, I think panhandles ought to be encouraged from the good this one seems to have done us in this case; and the day may come when this other panhandle may return the compliment and save the balance of the State as we have been saved by this panhandle.

Here is a small population, it is true, but a considerable territory. Is territory nothing in the formation of a State? We have paid large sums to acquire barren territories in the government of the United States. We were almost involved in a war with Great Britain a few years ago for a few acres of ice-bound and ice-clad mountains on the Oregon frontier. I say then if we adhere to the American principle which is to hold on to all the territory we get, there is a strong reason here why we should hold on to these two counties for it is manifest our territory is small at best. Sir, you cannot with a limited territory of mountain country— a country not suited to the growth of cities—have a populous State; and therefore it is essential that you must increase the territory to increase the population. I suppose no Virginians in entering the Union with a State would desire to have a little picayune State in size and substance with two members in Congress, with no hope of ever getting any more—an old state in one sense, perhaps falling in the rear of Kansas tomorrow. It ought to induce us to take this territory at all hazards and that especially when we have reason to believe the people there are heart and hand with us, because they are of us.

I therefore hope these two counties will not be stricken out, but be retained as part and parcel of the territory and people with us.

MR. VAN WINKLE. I shall be unable to vote on this proposition as it stands at present, and I think when I state my difficulties other gentlemen will find they are their difficulties also.

These are among the counties mentioned in table A., in the first resolution. Another set are mentioned in table B., second resolution. It will be found if the counties in table B shall come into the State, the counties which it is now proposed to strike out will be inclined to ask as Mr. Webster did on a former occasion at Boston, "Where am I to go?" If the counties of Russell and Tazewell are brought in under the second resolution they will completely separate the counties in relation to which the discussion is now going on from the balance of the State of Virginia. Russell and Tazewell are the eastern or southeastern boundaries of Buchanan and Wise, and also of McDowell. To obviate this difficulty, as the same one will arise in relation to particular counties when we come to consider the third and fourth resolutions, I move we now pass from the consideration of the first resolution to the second. If we decide on admitting those counties then the admission—

MR. LAMB. I do not think there will be any necessity for that at all. If the counties of Buchanan and Wise are stricken, they are necessarily to be inserted in the second, and that will relieve all the difficulty and meet all the objections.

MR. VAN WINKLE. Is that the motion?

MR. LAMB. No, sir; we must take up one section at a time; but it will be a necessity—it follows as a matter of course—that if these counties are stricken out of the first, they will be inserted in the second.

MR. VAN WINKLE. Well, sir, with that understanding my difficulty is removed.

MR. STUART of Doddridge. There is another difficulty. If we include these five counties here that gives us a population of 319,270 with a fraction of 65,000 which gives us an additional representative in Congress; but if we take out these little counties of small population, we only get two representatives with a large fraction that would nearly give us another—a fraction of 61,000, perhaps. You see—it does strike me, from this consideration, we ought not to strike out these two counties; for if we do, we go into Congress with but two representatives with a fraction that would nearly entitle us to another, and if we retain them, we go into Congress with three representatives. It is certainly of some importance; and I for one would oppose the motion to strike out for that reason if for none other. Let us have them altogether. Let the question come up fairly on the admission of the five counties.

MR. LAMB. I am astonished at the gentleman from Kanawha to have supposed I was serious in the remark I made about panhandles, and yet he has founded a large portion of his argument on that supposition, as if I, here the inhabitant not of a panhandle but of the panhandle, should disclaim all attachment to it. Still, sir, where the question is presented to us what counties we will take in and what leave out—if we are to parcel out this State according to our own good will and pleasure, and constitute a new State—let us at least, compose it of a compact and defensible territory. Let us not be sticking on excresences here and there which it will be utterly impossible to aid in times of difficulty and danger, or from which for our own defense under such circumstances we can derive no aid. The gentleman may be somewhat more familiar with the territory in question than I am, but from an inspection of all the maps I have been able to examine I do not see how the counties of Wise and Buchanan could communicate with the outer world except by going through Kentucky. These streams the gentleman speaks of all run into Kentucky. The people who inhabit these mountains—the mountains of Wise and Buchanan—I am told, are strong secessionists, and they have furnished a large quota of men to the secession army which recently fought the battle at Piketon, Kentucky. They live along the borders of that region of country. Are there any roads from this section of country into the portion of Virginia which it is proposed to take? What are the means of communication with that portion of the State? If I am not mistaken, that gentleman told me himself there was but one practicable road by which the people of these counties could get into Virginia.

If then it is a territory which is not naturally included in our boundary—if we wish to make a compact State—if leaving these out we have a natural mountain boundary all around us—if it is merely attaching excresences—had we not better leave them out? Such at least were the considerations which induced me to think it would be better, even if we are at liberty to take what territory we please, it would be better for us to leave out these two counties. They do not belong to us; their natural communications are with Kentucky; their only outlet down those streams, of which the gentleman speaks, is into Kentucky. Nor do I think that the gentleman from Doddridge is correct in the remark he makes that the addition of these two counties will entitle us to another representative in Congress.

MR. STUART of Doddridge. Better make some calculations so as to ascertain.

MR. LAMB. You would go before Congress, not claiming a representative under the regular apportionment, but a new state, a small state claiming two Senators; and it would be for them to assign in view of all the circumstances its proper representation in the House of Representatives; for that question would not be decided on a mere fraction of a few hundred more or less. Under all the circumstances, the question would present itself—under all the circumstances, shall we allow an additional representative for a mere fraction? I do not think we would get it, unless you presented yourself full up in numbers. But anyhow if we want to add a few hundred in order to overrun the 127,000 to furnish a claim for another member of Congress, take it from some territory that naturally belongs to us.

MR. POMEROY. I would like to ask a question; whether this report, which appears not to be contradicted, that these people voted nearly unanimously for secession, is true? Not only so but they went over into Kentucky and fought in the battle of Piketon for it. I would like if gentlemen would say here if we want that kind of a people added to us? I am informed that these counties voted nearly entirely one way and voted for the Ordinance of Secession. If they are that kind of people, others may vote as they please, but I would beg to be excused from voting for any such people as that to come into the new State.

I would just remark in regard to the fraction that has been spoken of by the gentleman from Doddridge, that the numbers of members of Congress is fixed; we cannot by any action of ours alter that. We will have a larger population, which will come nearer entitling us to another member by the reception of the counties of Hampshire and Hardy which are already represented on this floor, and which have shown some signs of a wish to be included.

I am not prepared to say whether these counties ought to be stricken out or not, but if it is true that they voted as represented they ought to be.

MR. HAYMOND. I move to amend the motion of the gentleman from Ohio by striking out all after the words "thirty-nine." If we go and include all this country, we shall defeat the whole movement; and I shall vote against it.

THE PRESIDENT. The chair has doubts whether the motion of the gentleman from Marion would be in order.

MR. LAMB. I think it would be better for the gentleman to withdraw the motion for the present. The better way to get at his object would be after my motion is accepted or rejected to let the question come upon the main resolution which involves the very matter he wants to get at.

MR. HAYMOND. I withdraw the motion.

MR. BROWN of Kanawha. In reply to some interrogatories of gentlemen, I must say that I really do not know what the vote was in the counties of Buchanan and Wise. I have seen gentlemen from those counties who told me the people there were about equally divided. Whether they furnished any material to the army that assembled at Piketon I have no knowledge, nor reason to believe they did. Those counties lie far above the county of Logan which lies opposite Pike county, of which Piketon is the county town. Logan county which you will perhaps include here I understand to be a nest of secessionists, and that they did furnish troops to that secession force in Kentucky. But I have never seen a man who would say that Wise or Buchanan did. They may have done it, but I have no knowledge of the fact, and they are some distance from the place and I have no reason to believe that they did. Perhaps they have gone there; I do not know. There may have been Union men from those counties too, who were forced there; for I take it for granted when one went the other was close by for I presume their wishes in the matter were not consulted there. But if that is an argument for excluding these counties, why Logan, part of Wayne and Wyoming and all of Fayette, ought to be cut off. That is a very dangerous game; and if you attempt to play it on principle I do not see where it would stop.

MR. PARKER. I talked with several of the military gentlemen who were at Piketon and the information I got from these men uniformly was that all round in that neighborhood, or over in Virginia as you approach Tazewell, the home of Floyd, there is nothing but secesh. That is their report. Not a single exception! So much for their political character. It seems to me in judging from the map—I have never been there—but it seems to me from the location of these counties, that their commercial and natural connection is with the southwestern counties, those that have the railroad. There is a small creek I think touching both of them, that runs through the mountains into Kentucky. As for their geographical position it seems to me, that their natural connection would be with the southwest. Besides they do form a corner or panhandle or point down there that certainly does not seem to be a desirable excresence to put on. According to the present division a branch of the Sandy divides McDowell from Buchanan and forms the boundary until it reaches the county of Tazewell and then by the county of Tazewell until it strikes the Alleghany, as I understand it. I am not so familiar or well acquainted with the country as some other gentlemen here. Then if we go on, taking in Mercer, Monroe, Greenbrier, and Pocahontas, we follow the range of the Alleghany until we strike the Maryland line. Certainly, geographically speaking to go and throw in those two counties away down there, even if they were all Union, seems to me worse than absurd; because if we are to cut up and parcel out a portion out of Virginia, we should have a little feeling of taste so far as formation is concerned.

I had some views which I shall not offer at this time in relation to this subject. I have recently looked through the proceedings in relation to the new State so far, and I am unable to see anywhere where this Convention gets the least power over this subject of boundary any more than we have to go over into Ohio and take three or four of her counties. As a point of law I have been unable to find where the power is conferred. I may be wrong, but at the proper time I propose to submit my views on that subject. I will not do so now. I regret that I have not submitted them earlier. I did not get the report until a few minutes ago, and did not examine it until very recently.

MR. HAGAR. I have a partial acquaintance in that country. I have been in McDowell. I do not know much about laying off counties or States. I know a little about the Bible and a little about farming. Take me off of that and I do not know much (Laughter). But by farming for several years, I have learned that a small piece of ground well cultivated is better than a large piece of ground fenced but not cultivated (Renewed merriment). We have in the new State, without these counties, twelve secession counties, in connection one with another; for I have been informed that Floyd made up a good portion of his army there, in McDowell particularly. Now, sir, we have a considerable territory there to clean out before we can actually cultivate the counties embraced already in our State. Add seven more counties then, it makes it more difficult. Will it pay to get them in? The best wisdom is to use the best means that will accomplish the best end. If the government can clean the secessionists out of there, and those adjoining counties and establish our laws I have nothing to say; but I do contend from best experience, using my figure that too large a piece of ground, fenced but uncultivated will not pay. We had better be careful. For my part I think it would be better to strike them out, and if we receive those other counties, why then add them and bring them in.

MR. WILLEY. Mr. President, I fear we are predicating our views and arguments upon the assumption that they are going to have a Southern Confederacy down there. Now, sir, I hope it will not be long until all these counties will be not only in the Union but really and truly of the Union. I have no idea, sir, of regulating our conduct here at all by the remote possibility that they are ever to be out of the Union. They are now in it—a part of the soil of Virginia—a part and parcel of the United States. But in dividing the state I think we should have reference not alone to our convenience, sir, but to the convenience of the other section of the state not to be included in our boundaries; and the more especially so since that other section of the state is not represented here in point of fact. The voice of the loyal men of that portion of the State cannot be heard, because they cannot get here themselves.

Now, sir, if we will look upon the map, my recollection of it is (it is not now before me), if you include these two counties within this State of West Virginia, what sort of a panhandle do you leave to the old state? My recollection is that you leave an iron wedge of immense length and odd proportions, running away down into the country there. If I were a citizen of east Virginia, it seems to me I would very much object to a division of the State leaving my section of it in such proportions. And I repeat again, sir, we ought here to have regard to the formation, the boundaries or convenience of the territory of the other section of the present State of Virginia as well as to our own. And, sir, I make this further remark; we shall have difficulties enough in pressing this thing through Congress, at all events, and under any circumstances; and whether we look to the convenience of the old state or not Congress will look to the convenience of that state. Congress ought not, and I suppose will not do injustice. It will be a common arbiter between both parties, and look to the territory of the old state as well as to the territory of the new State; and you have but to cast your eye on the map of Virginia according to my recollection of it now, to see that if these two counties are included in West Virginia, you leave a very odd portion of territory appended to the eastern section of the state.

MR. VAN WINKLE. I wish to say a few words on the legality of this proceeding, since it has been drawn into question, and since some allusion was made to it yesterday as a matter of illustration and comparison. It was said we were proposing to do that that we are not authorized to by the ordinance. I suppose no gentleman will deny that we are within the spirit of the ordinance, and that is to fix such boundaries as will best tend—while it is equitable to all others—to promote the prosperity of the new State. But I am disposed to contend that the power is in the ordinance itself. The third section declares: "The Convention hereinbefore provided for may change the boundaries described in the first section of this ordinance"—that is the boundary including the thirty-nine counties so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section." It then goes on to provide that: "If the said counties to be added, or either of them, by a majority of the votes given shall declare their wish to form a part of the proposed State, and shall elect delegates to the said Convention, at elections to be held at the time and in the manner herein provided for." In that case they can come in if this Convention so will it.

In the first place, then, a discretion is given to this Convention. Although every one of these counties might have voted to come in, yet this Convention would have the power to exclude them; and the power to exclude includes the power to admit. But sir, there is hardly a county that is named in the report of the committee which does not come within the description of lying "contiguous to the said boundaries, or to the counties named in this section". Or if there is one that cannot come strictly within the very letter of that, it lies so in reference to other territory proposed to be taken in, that it must necessarily be included.

Now, sir, we are certainly entirely within the spirit and intention of the Convention which made this ordinance if not of the ordinance itself. If not strictly within the letter we are certainly within the spirit; and I think there can be no doubt as to the authority of this Convention on those grounds to do what it is proposed to do in this report, that is to include every county named in it.

Well, sir, again, this Convention is now a Convention of the people of the thirty-nine counties with the addition of Hardy and Hampshire. We are met as the representatives of the people of these counties to consider what is best for their interests in reference to the proposed State; and most certainly we are not to be trammeled by an ordinance adopted by a convention representing the whole state under circumstances where information was different, and under the fact that the information and perhaps the circumstances were different from that which is now before us.

And now, sir, in relation to the concluding part of that section: it provides that these counties should vote on a certain day. Now, can it be supposed for one moment, knowing that those counties were in the military occupation of the rebels on that day, that the Convention from which we derive our authority intended they should be excluded on so strict a technicality—as that if they had voted the next day, legally in some way, or the day after, or any other day, that fact alone would be sufficient to exclude then, if this Convention favored their admission? That would be a most extraordinary interpretation of law. It would be, sir, for the sake of keeping to the letter, to renounce the spirit entirely. Obviously the intention of the convention of August last, that passed this ordinance was that those counties should be admitted when the people of the thirty-nine counties represented in this Convention should so decide. I think, therefore, sir, there is no room for a scruple, or, as Falstaff said, for "the smallest drachm of a scruple", on the subject of the authority of this Convention to admit all these counties—I do not say they should do it—but to admit all the counties named in this report, if they should deem it best to do so with a view of having a compact and solid territory and to give natural boundaries such as the Blue Ridge will afford, or for any other consideration that might be named or which may suggest itself in the course of this debate.

I trust, therefore, sir, that every member will feel himself free to vote upon this occasion according to the expediency and circumstances of the case and without doubt as to the power of this Convention to constitute any of these counties it please a part of the new State, either directly as is proposed in the first resolution or by submitting the question to the people of these counties in districts at an election to be held for the purpose. If, sir, we are to be trammeled by considerations of this kind we will find ourselves trammeled throughout. I apprehend that when we are satisfied that we are acting in the spirit and intention and meaning of the ordinance which has called us together it is not of so much consequence whether we follow it precisely according to the letter. Unless the members of that Convention which passed this ordinance were men of more than human prescience they could not have forseen the circumstances of today. They apprehended that by the election day, the armies of the Union would have advanced and those counties would have been comparatively cleared of an organized enemy and in most of them an election freely held. If they did not so contemplate it was but child's play to be making provisions in regard to this election in this ordinance. But I hope this Convention, not only on this but all other things will feel themselves free to act in reference to what concerns our constituents. We have not, it is true, the power of that convention over many things. That was a convention of the state and its power was coequal with the state and its action would override the action of the legislature. We have no such power; but over this territory, or any territory that it may be desirable to have for this new State, so far as the purpose of making a new state is concerned, I hold that the power of this Convention is supreme; and if we do fix it in this way, and then submit it to the people in districts and they should by a majority of the votes cast in each district and by a majority of the counties also vote to come in, and if in that form we submit this project to the legislature and they endorse it and then submit it to Congress and they endorse it—where is the power to set aside any act we do? The legislature have a discretion, of course. They have to take it or reject it. They have not the power over it we have. They cannot amend or alter it. They have nothing to do but to give their assent to it as we propose it. The people within these boundaries will act on this Constitution when it will be submitted to them, and the legislature will have nothing to do but accept or reject it. It is true they may suggest alterations, but they could not be made without sending it back to this body and again submitting it to the people. So when it goes to Congress, they can simply adopt or reject it. Like the legislature they may throw out suggestions and indicate what would enable them to pass it and accept it as we ask them to, but, sir, that is all they can do; and in that case, again, it must come back before an alteration can be made in it. But where would it come back? If this Convention were in existence, it would properly come before it; but if not, another for the purpose would have to be called by the people of the counties interested.

I therefore think, sir—or I am sure, my own mind is very clear, as to the power and authority of this Convention in the premises.

MR. LAMB. If the gentleman from Wood will allow me to thank him for the argument he has made on the subject, I must nevertheless say at the same time that I think the precise question before the Convention does not involve that question at all. When the question shall come up on the passage of the resolution, whether it be amended or not, then the argument which he has made will be pertinent and will have its due weight, and he may probably find that I concur in it.

I presented the motion to reject these two counties simply on the ground of expediency, not on the ground of a want of power; nor do I consider it involves that question one way or the other. My object was simply to perfect the resolution and make the proposition so that in my judgment it would be as perfect as possible. Then comes up the main question whether we have the power or not to adopt that proposition.

The question was taken and the amendment was agreed to.

So the counties of Buchanan and Wise were stricken out.

MR. HARRISON. I now move to amend the resolutions by striking out the word "McDowell" in the tenth line, and inserting the words: "and so much of McDowell and Buchanan as lies north of Tug Fork of Sandy River."

By looking at the map of Virginia, as made by Colton, I find that a small portion of the counties of Buchanan and McDowell lies north of that branch, the Tug Fork of Sandy River, running up to the southwest corner of Mercer—

THE PRESIDENT. The Chair would suggest whether it would not be better to make two motions of it.

MR. HARRISON. This can all be accomplished by one, I think.

THE PRESIDENT. The Chair is of opinion that the motion in that shape would not be in order.

MR. HARRISON. I move, then, that the word "McDowell" be stricken out.

In making that motion I wish it to be understood that if it be the pleasure of the Convention to strike out McDowell I shall then move to insert, "and so much of McDowell and Buchanan as lies North of Tug Fork of Sandy River."

MR. WALKER. Is it the proposition to strike out the county of McDowell?

THE PRESIDENT. Yes, sir.

MR. WALKER. I have some acquaintance with the county of McDowell. I was there in June when this difficulty came up, and I found there were a great many citizens of McDowell who were strong Union men. They lived in a place there, though, where they were obliged to be entirely neutral on the subject; but I expressed my sentiments there as a Union man and I found a great many friends, so many in fact that I was not afraid of being interrupted.

There is a large portion of McDowell where they did not vote on the subject of secession at all, where I think I am prepared to say from being with the people, they are Union people and desire to go with the Union. And I have no doubt it would be to their advantage to come with this new State; and I think when, the Southern forces are removed from that section that they will be entirely Union men or nearly so.

I was there during the summer several times, and I found the voice of the people there was that they desired the Union to be preserved.

MR. DILLE. Mr. President, I had not the honor of being a member of the convention which assembled in Wheeling during the last summer that enacted this ordinance under which we are acting; and hence I find some difficulty—a great many difficulties—arising in reference to it. I am free to say that so far as I am personally concerned, I am restrained by, and shall be controlled in the votes that I may give in reference to these counties by the action of that convention. It seems to me that the third section of that ordinance restrains and controls this Convention to a very considerable degree. I am inclined to disagree with my friend from Wood in reference to the literal and proper construction that this Convention should give to that third section. It seems to me that we have no course to pursue, if we pretend to act under this ordinance, except that we be controlled by it. That section of that ordinance provides that this Convention when it shall assemble and attempt to discharge the duties authorized by that ordinance, may permit certain other counties to be embraced within the boundaries of the new State in addition to the thirty-nine counties positively embraced within it. And I am not disposed to question the right and privilege conferred by that ordinance upon this Convention of permitting in the exercise of a sound discretion other counties lying contiguous to the thirty-nine counties to come in and be a part of the new State. But whilst that is the case, there is a positive act that they must perform; there is an obligation resting upon these counties which must act under it before this Convention, as I conceive, can act and permit them to come in. "If the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed State, and shall elect delegates to the said Convention at elections to be held at the time and in the manner herein provided for"—then this Convention may in the exercise of its discretion permit them to come in; but as I understand it, these counties—

MR. STUART of Doddridge. If the gentleman will permit me one minute to interrupt him, the course of the gentleman's argument will occur on the adoption of the resolution; but we do not want to argue in this manner on these questions of amendment. I would suggest to the gentleman—

MR. DILLE. If the gentleman will have a little patience and trace the argument, he will find that I will come to that point. The point under discussion, as I understand it, is this: shall the county of McDowell be permitted to come in under this provision of this ordinance? In other words, shall it be excluded from the provisions of this ordinance. Now I hold we cannot—acting on that provision of the ordinance—we cannot do otherwise than exclude her and strike out this provision in this resolution permitting the county of McDowell to come in.

MR. VAN WINKLE. Will the gentleman permit me to ask him a question? I do not know whether he is a legal man or not; but the question I want to ask is this: What is the legal rule where performance is impossible? Is an obligation binding?

MR. DILLE. I suppose if this Convention had desired to attain that object they would have inserted a provision that where *it was possible* or *where they could do it,* elections should be held. But they did not so declare it. I am merely investigating this with what I have before me.

MR. VAN WINKLE. The gentleman insists that this shall be done legally; I merely ask him this question: that where the performance is impossible, it certainly must be excused—so that the legal argument is against him.

MR. DILLE. I do not so understand it; and I do not understand that the legal rules will apply to this case in the same way as to other cases.

Feeling as I do on that subject, that I have no authority of that provision to bring in the county of McDowell into the proposed new State, I shall certainly go for letting her remain out. If I was free, it would afford me pleasure not only to embrace the county of McDowell, and a number of other counties besides the county of McDowell.

MR. HALL of Marion. I think we ought to determine one point before we progress with this discussion. To my mind it is very easily determined—and that is whether we are restricted in our action here by the ordinance to the limits proposed and suggested by the gentleman who has just taken his seat. If we have not the authority to go beyond the limits of the thirty-nine counties; if it be true that no other counties have complied with the requisition, and we are therefore bound within the limits of the thirty-nine counties—it is useless for us to be amending, preparing or doing anything, outside of that line. But it does occur to me, that my friend from Preston has lost sight of the true idea or otherwise I have not yet gotten sight of it. The question is, where, from whom, or what source do we derive our authority to act in the premises? From a convention that sat in Wheeling in June? That seems to be the idea of the gentleman from Preston. I have no such idea. I believe no such thing. I repudiate that idea. Now, if he is right, we perhaps have no right to go further. But I maintain we are the people themselves—and I want to know where there was a convention that ever assembled heretofore that had the power to restrict us? We are the highest authority—the people themselves. That is the legal contemplation of the position of a convention of the people. Now, sir, we do not derive our authority from that convention. It did recommend that this Convention should be called and the people have acted in the recommendation. Now that convention is here with power unlimited, as suggested by the gentleman from Wood. There is no power to limit our action on this subject. The people have sent us here to act on this matter, and I care not what regulations and restrictions have been sought to be thrown around us; they are as naught. I think I cannot be wrong in this thing. I think that this error arises out of the idea of from whence we derive our authority, and that we ought to determine that question at once.

MR. DILLE. Will the gentleman permit me to ask him one question: are the people of the county of McDowell represented?

MR. HALL of Marion. Well, I believe not. At all events we propose to act with reference to counties that are not represented here; and as suggested by my friend from Wood, they are not represented here because as we have reason to believe, of circumstances beyond their control preventing them.

Now, what do we propose to do? We propose that our action here shall be submitted to the people first and foremost. When we get through here it is to be submitted to the people; and when they act upon it, although the county of McDowell shall never have heard of this Convention and we send them our action and she adopts our Constitution and says she will go along with us, who has any right to complain or who is injured? So that it is only a proposition we are sending down there. Well, we do say this, however, that we may take in an unwilling county.

Well, sir, I am in favor of that thing. I am for "coercion" in that respect; and I have been opposed to that old line; and I do trust in this Convention we shall get a different line. I want that we have a line with natural boundaries; and if any county is in the boundary that ought to be included, however unwilling that county may be, I shall insist on applying the rule that the necessity of the many shall and must prevail against even the will of a county.

The gentleman from Harrison moves to strike out in this way with a view to modify and include part of the county. Well, he is driving at an idea that is a kind of a pet idea with me, of getting some kind of a natural boundary—a straight line; but I really have not looked to this matter enough about it to undertake any argument except as to the mere question of right. I think there can be no doubt on that question. If we have not the right we ought to know it now.

MR. STUART of Doddridge. I desire to call the attention of the Convention a few moments. It does seem to me, sir, this argument is taking a very strange course. The proposition is simply to mature this resolution in order to suit the views of gentlemen, and I do not see why it is that we go into the argument on general principles as to whether this Convention has a right to include other counties, because the same identical question will come up after we pass from this motion. The only question before this body is, is it proper and right to strike out McDowell from this class of counties we propose to take in?

MR. HALL of Marion. Would it not be better to determine now, first, whether we have any right to alter the boundary fixed by the former convention?

MR. STUART of Doddridge. That question is not before the Convention at all; but the question is, will we strike this county out from the class of counties it is proposed to take in.

MR. VAN WINKLE. I would suggest that if this argument must come up, it may as well progress now, since we have had the half of it; and it will rather save than consume time. Gentlemen will perhaps feel freer to vote.

MR. STUART of Doddridge. Then this question will be decided on a false issue. Many members will vote to strike out McDowell who will not vote to strike out others. I understand, my friend from Harrison, if the resolution is amended, will perhaps be in favor of it. Now, gentlemen, it is always permitted in legislative bodies for the friends of a bill to amend it and make it as acceptable as possible before the vote is taken on its final acceptance or rejection. The first question here is, shall we amend this resolution, and then the question will arise as to our power over this matter. I am inclined to let the question come upon the other portion of the report as it undoubtedly will; but I will say to the gentleman from Harrison who made this motion, that I am unacquainted with the natural boundaries in McDowell—I presume he is more familiar with it—but, I am willing to vote for his amendment in order that the section may be more perfected, with a view of voting for the natural boundaries as we may find them to be.

MR. DILLE. That this question may be tested, I propose to amend the proposition of the gentleman from Harrison by embracing in his motion to strike out, in addition to the word "McDowell", the words: "Mercer, Monroe, Greenbrier and Pocahontas." I do this for the purpose of ascertaining the sense of the Convention in reference to the whole question.

MR. HARRISON. Before the vote is taken, I hope the gentleman will withdraw his amendment; because it might affect —unless the Convention should be decidedly of opinion that we have no right whatever to add anything to the thirty-nine counties represented here—it would affect the question of fixing the boundary by natural objects such as rivers and mountains, as I propose to accomplish by another amendment hereafter to this resolution.

THE PRESIDENT. If the amendment of the gentleman from Preston fails, the vote will then be taken on the amendment of the gentleman from Harrison.

MR. HARRISON. It would be much better to let the question raised by the amendment of the gentleman from Preston arise on the main question, when we get it in such a form as would be satisfactory to the Convention, and argue that question then and dispose of it. I suppose the object of the gentleman is to act on that question now.

MR. LAMB. I have no objection at all to see this discussion proceed upon a question that will necessarily come before this Convention directly, whether it be involved as a motion precisely before the house or not; but when we come to vote upon the particular motion at hand, let us understand what we are voting upon and how far it may involve the principle which has been under discussion.

We are simply now engaged in perfecting a resolution in order to be presented for the adoption or rejection of this Convention. Whatever may be the disposition of the particular motion which is now before the Convention, it does not conclude the question at all whether the Convention shall admit or reject these counties; of whether they have authority to admit or reject them. It is certainly the natural course of things that the resolution should be put in as perfect a shape as possible before the question comes up finally; shall it be adopted? It is an act of courtesy always shown to committees that report resolutions or to members that offer them; and when the question does come up not upon the simple shape in which the resolution shall be presented to the Convention, but shall the Convention adopt or reject the resolution as it has been modified, then the issue of the whole question is necessarily involved and comes up direct. If the amendment of the gentleman from Preston is rejected, if the Convention should refuse to strike out all these counties, why immediately afterwards, then, the same question he has been discussing comes right before the Convention again, is again proposed to the Convention: shall we adopt the resolution that proposes to include these counties in the new State? And that necessarily involves the question of power. His motion therefore, is, I take it, not a proper one. Let us act on this resolution in the best shape we can, and then when we come to adopt, we necessarily decide the main question.

But I have no objection—this discussion must come up anyhow, and we have got partly through with it—I have no objection that the discussion should proceed on the main principle; but, when we come to vote, let us recollect that that main principle that has been discussed is not yet involved in the question.

THE PRESIDENT. The Chair is of opinion that it might indirectly or pretty fully involve that question; yet the Chair is decidedly of opinion that custom and the usage of all deliberative bodies does allow the party bringing forward a measure to perfect it before it is assailed. But he does not think there could be any doubt of the propriety of arguing the right of the Convention to extend the boundary over these counties on the motion to strike all connected with the entire section. It would, however, facilitate business very much if the friends of the measure were permitted to perfect their resolution before it is argued.

MR. DILLE. In making the amendment I proposed to the Convention it was not intended on my part at least, to reflect in any way upon the Committee. Feeling as I did upon an examination of this provision in the ordinance of the former convention that we had no authority to embrace these counties, I supposed we might more readily test this question and attain the object desired much sooner by means of the motion I have submitted. Personally I might say to the Convention that I regret very much that this Convention is hampered as I conceive it to be—I may be mistaken in this, and hope on investigation I may be—hampered with the provisions of this third section. Hence the object I had in view in raising the question, that I might the better express my sentiments upon the motion of the gentleman from Harrison. I do not wish to do anything that will affect the action of this Convention, or produce confusion by any motion on my part; and if it be the desire of the Convention that I shall withdraw the amendment, of course, I will do so; and in the meantime I shall not feel at liberty to vote until the action of the Convention be taken upon that proposition, or in other words I shall vote for striking out until I am satisfied this Convention has the power to embrace other and additional counties.

MR. BROWN of Kanawha. I hope then, if it is the purpose of the gentleman who has just taken his seat to raise the question of the power of the Convention to embrace all these counties, that he will not withdraw his motion, but that we will settle it at once. For if, as he has announced his purpose to, he raise the same objection upon every county, one at a time, we shall be here until the end of the week, discussing the identical same question over and over every time; because it is perfectly clear if this Convention shall decide that we have no power to include any county not already included by the ordinance of August that then it would be better to settle the question by one vote for all than vote on the same question so many times. I should have made that motion myself; but as I am not a friend to striking out, I could not do it. If the question is to be met, let us meet it at once. It must be decided by the Convention. I think it has already been decided in changing the name, and in admitting the members from Wyoming and Fayette, none of whom were elected in accordance with the provisions of the ordinance. I think it is clear that the Convention cannot possibly complete its labors so as to submit their result to the people by the 26th inst.; so that you are hampered by that ordinance in every manner; and if you attempt a strict conformity to the very letter of its provisions, we had better go home, return ourselves to the people and tell them to send others in our places.

It seems to me we have come here to effect a great end. The people have determined for themselves that there shall be a new State, and here we are providing the Constitution and boundary of it. If it be necessary, when you have determined on the principle and question of a new State—that a certain boundary is essential to the existence and prosperity of that State, can there be any doubt of the right of the people of that State and the represenatives here to march up to the question and establish their boundary on that limit? I understand, sir, that one of the fundamental principles laid down by Vattel in the laws of nations, is that wherever a territory becomes essential to the prosperity and safety of a State, it may purchase it if it can, and if it cannot, it may take it. It was the identical same principle asserted by our government in the case of Louisiana when it was a French territory. Our people said, the mouth of the Mississippi must be ours; it is essential to our prosperity and safety; and that it should be in the hands of a foreign government cannot be tolerated. The government must purchase it, and if it failed in that it must take it by force; and if it did not the people would rise in their might and take it in spite of the Federal power. The necessities of the case would have justified the government in doing it, and its right would have been maintained on the principle of the law of nations, had France refused, wilfully refused, to have sold it.

I think then when we look at the fundamental principles that must govern our action—when we look to the future prosperity of the State, we will fix a boundary permanent and durable, that will be a barrier against evils from other quarters—that will insure peace and prosperity to this people; for that is what we are here now to do, and although the feeling may have been very general to have a division of the State, yet I am not sure we would have been here but for this, and because we had no security for it in the present organization of the State.

It is necessary and essential therefore that this boundary shall be determined; and in determining it, as wise men I think we should plant it on the eternal mountains, and the waters that flow westward must mark the limits of this State or we have no State at all. It is with these views I feel I am unable to vote for, or make the motion, as my friend has done, to strike out these counties. I desire the question to come up at once. I think the trammels must be shaken from our hands, if any man feels trammeled, when we grapple with this question.

MR. STUART of Doddridge. I would say to my friend from Harrison that by voting down the amendment to the amendment, then, he can go on and perfect the resolution to his satisfaction. I desire that to be distinctly understood; and I hope the amendment to the amendment will be voted down, in order that the friends of this measure may have the opportunity of perfecting it as far as possible to suit the views and convenience of this body.

MR. LAMB. Mr. President—

MR. STUART of Doddridge. I desire that the Convention shall understand—that the friends of the amendment to the amendment should understand the position we now occupy. I look upon this measure, Mr. President, as one affecting the interests of our State most vitally, and one upon which its future course depends. I refused to argue this question until it was raised, but now the amendment of the gentleman from Preston does legitimately raise it. I had hoped it would be raised in a different form. As I understand some of the arguments of the gentlemen here, one of the reasons why they will vote against admitting these counties is that they are counties inhabited by secessionists. Well, sir, if that be the case and if that is to be the reason that is to influence our action here, we ought by all means in the world include them in order to get rid of them, because if they are secessionists, the argument is that they will always remain so, and there they are right in our way, and they being secessionists have no claim to consideration of the government and we are at perfect liberty to do as we please with them.

Now, sir, we want the great natural boundaries indicated by my friend from Kanawha, and the natural defences the God of nature has given us. Look at our situation. If we get into this trouble and these secessionists are to remain there, how can we defend ourselves from them? They are right here amongst us, west of the Alleghany Mountains. If we have any defense in the world, it is the top of the Alleghanies; and the proposed boundary includes that territory which will enable us to secure ourselves against these secessionists which gentlemen appear so much afraid of.

Another reason is that these people have not brought themselves within the purview of the ordinance of last August; that they have not voted and expressed their will and pleasure to be received into the new State. Now I understand the spirit and intention of that ordinance was that the people should have the opportunity to vote. It presupposed the fact that they would have the privilege of doing so. They have not had it; and yet you want to cut yourself loose from them and deny yourself the great natural boundary, simply because they have been deprived of the privilege of expressing their sentiments. I have not a doubt, Mr. President, in my mind, that if the State is to be divided, if we are to have a West Virginia, and the question is to be submitted to these people whether they will go east or go west, that there will be hardly a dissenting voice among them, because their interests are identified with ours in every respect. Their trade and commerce is with us. They are deprived of the privilege of having community almost with the eastern portion of the State. Mountains prevent them from associating and trading with eastern Virginia; and the very reasons we assign now, and one of the great reasons that we will offer to the Congress of the United States why we should have a new State out of a part of the State of Virginia, is, sir, that our natural location and circumstances and our interests are such that they require it; and yet, sir, if we refuse to receive these counties, it will cut us right off from citizens of western Virginia whose interests and situation are identical with our own.

I hope, Mr. President, that the amendment of the gentleman from Preston will be voted down, and then that the amendment of the gentleman from Harrison will come, and that if he desires to perfect this resolution he may have an opportunity to do so.

MR. WILLEY. This is a very grave question. If the Convention is ready for a vote, I shall not interpose any objection myself, whilst I say my mind is perplexed somewhat as to the course of duty. I do not propose myself to discuss the matter tonight. I am physically unable to do it. I shall not ask that the consideration of the resolution be postponed if the Convention is ready for the question.

MR. DERING. I move the Convention adjourn.

The motion was agreed to, and the Convention adjourned.

IX FRIDAY, DECEMBER 6, 1861

Prayer by Rev. D. W. Fisher, of the Presbyterian Church.
Journal read.

MR. CALDWELL. Mr. President, so far as my experience is concerned, it is rather unusual for the Chairman of a committee to make a report, and also a minority report. I did not design, sir, in offering the paper which was read here yesterday, anything more than a substitute for one of the sections of the report of the committee. I did not look upon it as a minority in fact of the committee itself. It was a proposition made by two members of the committee, as a matter of individual opinion merely, that it should be embraced as a substitute for the ninth section of the report; and I merely asked that it should be laid on the table and printed so that the members of the Convention should have the benefit of it. I would rather it should appear that it was offered by those two gentlemen as a substitute for the ninth section of the report of the Committee.

MR. STEVENSON of Wood. Mr. President—

THE PRESIDENT. What alteration would the gentleman from Marshall suggest in the record?

MR. CALDWELL. I would suggest it should read that Mr. Ruffner and myself offered the ninth section as a substitute for that clause. It was submitted by me but not as chairman of the committee, but merely in my privilege as a member of the committee on behalf of myself and the member from Kanawha as a substitute for the ninth section, and not at all as chairman of the committee.

MR. STEVENSON of Wood. I did not pay very particular attention to the reading of the minutes, but I would suggest that I presented a petition yesterday from a number of citizens of my county and I believe it is customary to make a brief notice of such presentations on the record in such conventions as this. And I would like it to be done if it is consistent with the duties of the recording officer.

The corrections desired by the gentleman from Marshall and the gentleman from Wood were made in the Journal by the Secretary and it was approved.

MR. WARDER. Mr. President, I desire to offer the following resolution:

"RESOLVED, That this Convention will meet in this hall on Saturday at 2 o'clock, p. m. and in a body visit the Fifth Ward Public School of this city, in compliance with the invitation received and accepted on Wednesday; and that the Secretary of this Convention immediately inform the officers of said School of the proposed visit."

The resolution was adopted.

MR. WARDER: Upon a moment's reflection, perhaps it would be better to change that from Saturday till Monday. The School will not be in session on Saturday. I would ask to recall it and change it to Monday.

The suggestion was concurred in and the resolution so altered.

Mr. Ruffner offered the following proposition:

AMENDMENT

"To the report of the Committee on Boundary, to be inserted between lines 34 and 35.

RESOLVED, That if from any cause a full and free expression of the popular will in the counties embraced in the tables, B, C, and D, in the report of the Committee on Boundary or any of the said districts on the said third Thursday of April, 1862, provision shall be made for eliciting the same on some other day."

Mr. Wilson, the following:

"RESOLVED, That it shall be the duty of the Legislature of this State to make suitable provisions to District and lay off the counties of this Commonwealth in School Districts for Free Schools, to be supported by such portion of the Literary Fund of the State of Virginia as the State may be entitled to, all moneys accruing to the State by fines, penalties, forfeitures, &c., and all moneys accruing to the State from confiscation of property of rebels residing within the boundaries of this State, and two-thirds of the capitation tax to be levied and collected annually according to the provisions of the Constitution, shall be applied to the establishment and support of Public Free Schools."

Mr. Dolly submitted the following resolution:

"RESOLVED, That the people of West Virginia now in Convention in the city of Wheeling to revise and frame a Constitution for the proposed new State, do, before further proceeding in the annexation of counties, repeal the act of the former Convention, on boundary."

MR. POMEROY. I would move that that be laid on the table.

MR. CALDWELL. I second the motion. It can be called up any time.

THE PRESIDENT. The next business in order is the unfinished business of yesterday, the consideration of the report of the Committee on Boundary. The question is on the first section, on the amendment of the gentleman from Preston to the amendment of the gentleman from Harrison.

MR. DERING. Mr. President, I made a motion for an adjournment last evening. It was after having heard my colleague say that he was perplexed and that it was a great question we had under consideration. Sir, if a gentleman of his legal attainments and of his long experience in public affairs was perplexed with this question, then what could you expect of others of us who do not enjoy the advantages in that respect that he does? We find here, sir, lawyers, differing as to the legality of the question involved in this ordinance; and, sir, in the absence of any positive testimony from the counties alluded to in this ordinance in reference to the difficulties of holding an election, I say the presumption is a fair one, sir, that they do not desire to be admitted into our new State, and participate with us in its advantages. The fair presumption is, sir, if they had a desire to hold an election—if there had been insurmountable difficulties in the way—if the rebel soldiery were there to prevent them—they would, at least, sir, on the present occasion have had some representative here in some form to express their wishes on this subject. But, sir, we have no representative from any of those counties, either formal or informal. We have no one here, sir, from any of those counties expressing a desire to come in and take part with us in this grand movement. I say, sir, then, in the absence of all testimony of a positive character in reference to these counties, my opinion is we should not embrace them within the boundaries of our new State.

Sir, I hold, this morning, although I have been perplexed on this question of boundary, that we should break away from the technical bearings of this case and look at the question in the light of expediency. The question it seems to me comes up before us this morning, is it expedient to embrace these counties in the boundaries of our new State? And in the first place, sir, I think it is inexpedient. We have got no evidence of their desire to participate with us or to come in amongst us. If you open this boundary question, sir, there is no telling where it will end. I think there is danger in opening the door upon this vexed question. Sir, we will never have any fixed boundaries if we leave the door open and leave counties to come in now and then as they may want to do hereafter. They, sir, in these counties spoken of have not expressed any desire—have not complied with the provisions of this ordinance. They have given us no positive evidence of any difficulties in the way of an election, having sent no delegates here, sir, in any manner to express their wishes on that subject.

Sir, the presumption is a fair one that in these counties there are a great many rebels. The presumption is a fair one, sir, that a large proportion of the inhabitants of these counties are of the secession stripe; and, sir, I for one am not willing to embrace any people in the bounds of our new State who do not desire to come with us. I for one do not desire to embrace any more of this rebellious element of secession within the bounds of our new State than we already have. What will be the result, sir, if you go to Congress with your State boundaries undefined and unfixed? Do you think they will admit us into the Union? Sir, with the many difficulties surrounding this question in presenting our claims to Congress, I think that in going to Congress without our boundaries fixed and defined, we will be placing an insurmountable barrier in the way of our admission into the Union. Let us fix and define our boundaries well. Let us go to Congress and ask them to admit us into the Union. The people, sir, within the bounds of this new State everywhere have expressed their loyalty by large majorities, and desire to emerge from this anomalous position which we now occupy. Our allegiance is claimed by two States on the part of two different national governments. Let us, sir, define our position; let us, sir, define our boundaries; comply with the requirements of the Constitution of the United States; and go to Congress and ask them to take us into the Union. Our people, sir, the people in Monongalia are desirous of seeing this new State formed and inaugurated. They are desirous, sir, of emerging from this state of uncertainty in which we now exist. They want to know, sir, whether we are to be a state in this Union. They want to know, sir, whether we are to belong to those arch traitors in the South, or whether we are to take our position under the Stars and Stripes in this glorious Union of ours, or whether we are to remain in this uncertain and unhappy condition any longer. Sir, the people are clamorous for a new State. They are clamorous to be admitted by the Congress of the United States into this Union; and they never will rest satisfied until they are admitted. And, sir, let me say to the delegates to this Convention that the people within the boundaries of this new State will hold them to a strict responsibility, if they let anything delay them from marching right on to that desired end. Sir, we have thirty-nine counties now—forty-one, I believe with Hampshire and Hardy—that have expressed their desire to be formed into a new State by an overwhelming majority. We, sir, have in our midst all the resources and elements of a great State, and if we will inaugurate this new State and develope our resources, I think, sir, we will have a State that for prosperity will challenge comparison with any of the sister States of this Union. Why, sir, look at the New England States—look at little Rhode Island and New Jersey and Delaware and Connecticut, and a number of others that I might mention—smaller in point of territory than West Virginia; but, sir, they are the most prosperous States of this Union. They, sir, challenge comparison with the other States and show a degree of thrift and prosperity that the larger States cannot exhibit in proportion to population and territory and resources.

I say, sir, then, that I am for defining our boundary. I am for bringing our new State, with all its elements of wealth into existence and inviting emigration from abroad of the loyal citizens of this Union. Sir, we have a capital now of two hundred and seventy odd thousand inhabitants; and I predict here this morning, sir, that before five years we will have a million. We will go on in that ratio for years to come, and our hills and valleys shall be dotted with a thrifty, prosperous and numerous population.

Let us then, sir, here at the very threshold take the bull by the horns, go into the expediency of this question, leave the technical and legal bearings of it as the lawyers themselves differ upon them and decide at once, sir, that we will define our boundaries as they have been defined and adhere to them, and so present our Constitution to Congress and ask to be admitted with it into this glorious Union of ours.

Sir, I desire to claim allegiance to the Stars and Stripes. I desire to live under and I desire to die under them. And I do not want to be claimed, sir, by Jeff Davis and his minions, or occupy this position of uncertainty any longer. Let us at once define our boundaries, decide this question, and march on to our high destiny.

MR. BROOKS. Mr. President, it is an old adage, sir, and a true one that "doctors will differ," and I have learned from observation that lawyers will differ also. I am neither a doctor nor a lawyer, nor posted on the technicalities that seem to govern some men in debates specially touching law points. But I have got it somehow on my mind that I do know a little about consistency, and when a thing presents itself whether it really bears the aspect of consistency or inconsistency; and therefore I feel disposed this morning to make a few remarks in support of the amendment offered by the gentleman from Preston, and touching the legality of the report under consideration and which he offers to amend.

It has been more than intimated, sir, on this floor that the ordinance that gave us power and being (or being and power) does not bind us. There are views I take that present to me the conclusion that expediency will do away with some items of that ordinance, while it presents itself to me that no expediency can do away with other items. In the first place that ordinance requires us to present to our people a constitution for their ratification by the fourth Thursday of the present month. Judging from the aspects of things this morning, that amounts to an inexpediency, to say, the least of it, from the fact that we shall be incapable of maturing our work here and letting it pass out sufficiently early for the people to examine and consider it by that time. Hence driven we are to supercede that part of the ordinance. But on the part under consideration this principle of boundary, there is presented to my mind no such appearance of necessity. The Convention in the passage of that ordinance prescribed principles to govern the whole matter. They gave us a boundary of thirty-nine counties. They named conditions upon which other counties might come in, connect themselves to and form part of the new State. Those conditions went abroad; those conditions were understood; but up to the present hour we have no information whatever, no intimation in the least, that those counties spoken of in that part of the report which the gentleman proposes to amend, availed themselves of the opportunity thus afforded, or have the smallest desire to make a part of our new State. The fact is that during the interval that has transpired since the passage of that ordinance, I have been conversant with some, at least, of the citizens of some of those counties, who have informed me that the spirit there is that we are rebels and should be treated as such; that this Federal force by which we are protected and enjoy liberty we this day enjoy are intruders, and hence an overwhelming majority of the citizens of those counties when they speak of us speak of the "rebels" and "intruders."

But apart from this, let their spirit be what it may, I cannot see, for my part, the consistency of their adoption as a part of this new State. Looking at the proceedings of this Convention, we find in this report included two more counties, Wise and Buchanan. These counties were stricken out of the report by a vote of this body. The argument now brought up for the inclusion of Monroe, Mercer, Greenbrier and Pocahontas, is that out here is a breakwater that severs them from the valley, and as the streams flow in this direction they should necessarily belong to this State. Well, why were those other counties stricken off? We find by examination that the same breakwater passes on and places Wise and Buchanan in the same category. Their waters flow to the West, and hence they too are connected with us. But they are stricken off, and why is it? What was the argument? Why, sir, we are gravely told the springs of these two counties issued into another river and did not pass right here so we could drink out of them. That is in substance the argument. Therefore they must be stricken off; it is inexpedient to have them; they do not belong to us. But Greenbrier, Mercer, Monroe and Pocahontas must belong to us because of this breakwater which separates them from the valley and eastern part of the state. Now I cannot see the consistency of this difference, when the reason assigned for making the difference seems so simple and so small.

But, sir, I presume the spirit of the question has not been set forth in this matter. These four counties are one of the garden spots of western Virginia for wealth, and the revenues that flow out of that wealth should necessarily flow into the treasury of West Virginia. That is the grand argument, sir, and let us have it barefaced. But an argument has been presented here opposing the motion of the gentleman from Preston, telling us that if they are not loyal we must make them so; therefore we must have them. Now, I ought to be patriotic; both my grandfathers served in the Revolution; my father served in the war of 1812. The same blood ought to run in my veins and the same spirit move my bowels; but I acknowledge today there is not enough of the war-horse in me to take these counties into our boundaries contrary to their wishes—to compel them to come in. If we begin this movement we will extend our borders a little further. Just beyond the valley there is another breakwater that we have looked at for the last thirty years and thought it would rightly divide the eastern and western Virginia so as to make two states. Well then we will extend our boundary to that and say there shall be the line, let matters be as they may. Let us take the ordinance —what is the spirit of it? Does it breathe the same spirit? No, sir; from the thunder tones that they shall belong to this West

Virginia, it softens down to the whisperings of the zephyr and says they may come in upon the concurrence of a vote of a majority of the citizens and a majority of the counties—requiring a condition for their annexation, that they come in willingly.

Well, that is the principle on which I would like to have it, and the principle I think on which the best governments are based. If I understand anything about the strength of a government it consists in the principle that government is based, and the principle of strength in a government is that which is most voluntary. Compulsion has never produced good subjects and will not produce good citizens; but where the people voluntarily take upon them the yoke of government, they submit to it willingly, they move harmoniously; and hence the government established by voluntary association appears to me to be evidently the most permanent, the strongest government known.

But we might extend it a little further if this is the spirit of the terms and precedent by which we are to be directed and governed in our deliberations here and conclusions. Just out yonder lies a territory belonging to Great Britain; we call it Canada; and surely if there is any law of natural boundary by which one territory belongs to another there are natural boundaries by which Canada should belong to this great republic. Then we will rise in the pride of our might and subdue Canada also and push on and grasp the entire new world and call it all this great republic on the same principle.

But I am not in favor, I said, of compulsion. Therefore as we have had no intimation whatever from these counties that they wish to come in, let us look at the principle of action laid down in the ordinance that gives us the power we possess. If they had said by a vote that they wished to come in, they were provided for. If they had said by a vote that they did not wish to come in or made no expression of their desire or wishes on the subject, it remains that we are to pass them by. And notwithstanding some have supposed that this ordinance that has given us being and power could be passed by and disregarded and that we should rise in the strength of our sublimity and do what seemeth to us good, yet I feel for one that until new light is received, until I shall have learned more than I have ever learned, I feel, for one, bound to respect the principle laid down in that ordinance; and if those gentlemen whose heads are clearer than mine and who shine with a little more luster, will produce the argument by which we may see more clearly the consistency of principles for which they contend, we shall be perhaps influenced to go with them; but until that we go with the gentleman from Preston, for the striking out entirely of these counties; having nothing to do with them, but abiding by the principles by which we undoubtedly, so far as I conceive, should be governed in our decisions.

MR. CARSKADON. As the representative in part of the counties lying out of the first proposed boundary of the State, I feel an interest in this question, and shall take this opportunity to give the Convention my views upon the subject.

In the first place I hold that if we confine ourselves to the spirit of the ordinance under which we were called here, we do not violate it in taking in said counties; as my friend from Wood mentioned yesterday, it being impossible for those counties to hold the election which the Convention that called us here anticipated. It is nothing but right in my opinion that they shall have a chance to vote, and say whether they wish to come in or not. Now, in the county which I have the honor in part to represent, we opened a poll at but two precincts, and polled a vote of between sixty and seventy for the candidates to this Convention. There was a vote of about 179, I think, but the residue above what I have mentioned were soldiers, who had a right to vote on the division of the State but not for the candidate to sit in this Convention. And I know that this is not a proper representation of the voters of the Union men of the county; because we have more than sixty Union men, as you doubtless know in the county, for under the pressure of the military power we cast a vote against the ordinance of secession of some eight or nine hundred and I anticipate if the vote could be taken now in the county we could carry it by a Union majority.

Well, by adopting the report which the committee have brought in, we will give the county with those other counties lying contiguous, a chance to vote and say whether they will come in or not. I have seen men from the surrounding counties who say that they believe a majority in the counties surrounding and contiguous to ours within the proposed boundary, are in favor of being included within the new State. Well, look at the vote in Morgan and Berkeley. In Berkeley there was a vote of 800 majority against the ordinance of secession. Their interest is our interest. Their interest is with this division of the state. Therefore I hold that that county and the county of Morgan which gave 571, if I recollect aright, against the ordinance of secession, would

I have not the least doubt been anxious to join in the State of West Virginia. And I hold that we are a Convention capable—we are called by an ordinance of the convention which sat in August, but we are not as a convention right from the people. I do not pretend to be of the legal profession, but I think our powers upon this matter are beyond and above the powers of the convention which called us into being. For instance, the legislature may call a convention of the people, and the people in convention may make laws and change the Constitution, as that body could not do that called them into being. Therefore I shall vote for the legality of this Convention having power to admit those counties.

MR. RUFFNER. I rise, sir, merely to protest against the line of argument of those two gentlemen who have addressed you in regard to the non-appearance of delegates from the counties embraced by this resolution. They cannot be ignorant of the fact that the secession armies have continued from the first of this contest to hold possession of the counties in consideration; and it is well known that the power of the southern army has been exerted even to the suppression of loyal sentiment on the part of the citizens; and it is impossible in the nature of things that those counties or any portion of their citizens could have expressed themselves in regard to their disposition upon this subject; and it is unfair to assume from that fact that they do not wish to be represented here. It was upon this point alone that I desired to make this single remark.

MR. STEVENSON of Wood. I have listened with some pleasure and profit to this discussion so far, and my impression from what I have heard is rather in favor of confining our operations to the limits proposed by the ordinance of the convention calling us together. It is possible, sir, that I may change my opinion in reference to three or four counties that are spoken of; but it does seem to me if we are to expand our boundaries to any considerable number of the counties embraced within this report, that we are likely to get into the very difficulty that we profess to be trying to get out of. The general impression here is, sir, although there do not appear to be any statistics that are very reliable on the matter, that a very considerable number, if not a majority, of these counties, are controlled by the very element which has brought our National and State calamities on us—the element of secession. Now, sir, if that be true—and I have not heard it contradicted here in reference to most of the counties—it does seem to me it would be very injudicious to extend the boundaries of this new State to any considerable number of these counties. If I could be satisfied, sir, that these counties of Mercer, Monroe, Greenbrier and Pocahontas were made up of any considerable number of loyal people—if I thought extending the boundaries to embrace these would not introduce an element of discord—I would favor it. But I have not been and am not satisfied of that fact. They lie, sir, it seems to me, within the boundaries that would be a natural division, so far as it goes, for this new State.

There is another consideration here, Mr. President. The complaints that I have generally heard urged against extending the limits of this new State over any part of the Valley of Virginia are these: That the people there have not a community of interest with us; and if the statement which I made, and which is believed to be true, be really true, that a majority of the inhabitants of these counties are opposed to this new State movement, and are at the present time either in active or sympathetic rebellion against the government, will the extension of the boundaries of this new State to embrace them not be introducing the very element of discord that we are trying to escape, for which the people have assembled this Convention? Let me suppose a case, sir—Suppose we extend the limits of this new State so as to embrace a number of these counties. We submit to them a Constitution, which we create here for the organization of the new State. We of course invite those people to vote upon this Constitution; and suppose, as I think the case at least very probable, that a majority of the people in some dozen or more of these counties reject that Constitution, I know the friends who favor this extension will say that the immediate and only effect would be to put them outside of the pale of this new State—or rather prevent them from coming into it—but that will not be the only effect. We may understand it; we may see it in that light; but I apprehend, sir, that our fellow citizens in other parts of the country will get a different impression—an impression that a large number of counties within the boundaries of this new State are hostile to the organic law which the Convention made for it; and therefore its moral effect would be so far destructive to the best interests of that Constitution and of that new State. I would say this, sir, however, that I have no objection to extending the boundaries of this new State to such counties as we know to be loyal to the government and in favor of this new State measure.

If we know that their people—if we can have any evidence of that fact—if we can have any assurance that a majority of their people are in favor of this new State movement—that they are loyal to this new State, and will be faithful and loyal to their country—and that they have some community and identity of interest with us—I would not be opposed to an extension of boundary so as to embrace such counties; but I think, sir, that the limits laid down in the ordinance of that convention which assembled us here will probably be as nearly right as any this Convention can make; and until I am better satisfied, sir, that it will be wisdom and good policy to extend these boundaries, I shall feel inclined to vote for the amendment of the gentleman from Preston.

MR. PARKER. Mr. President, I would say a few words as to the powers of this Convention. Has this Convention, then, the powers to change the boundaries as they have been fixed by the other convention? I have looked over the question and jotted it down to make my remarks as concise as I can and save the time of the Convention.

It is a familiar principle of law and equity that when a thing is to be divided, the existing subdivisions changed, all parties interested must be represented. That I think all the lawyers, and those that are not lawyers, here will agree to. If three persons are the joint owners of a field all must be represented in order to make a valid division. That we shall agree to. If after the division is made and the bounds fixed one of the parties should attempt to change them without the consent of the other two, he would do an act which human and divine law condemns—he would "remove his neighbor's land marks." If in making the division, however, the two should impose on the portion allotted to the other, a name, as white acre or black acre, or prescribe the manner in which he should cultivate his portion after the interest of the two in it had entirely ceased, these would be restrictions inconsistent with the sale and absolute ownership of the one and of his use of it—his right to use his own as every man has a right to. This great right which attaches to all absolute ownership being understood, those restrictions would be null and void. I believe every legal gentleman here will agree with me in that principle. Therefore such restrictions would not be binding; because thus to attempt to put upon him a thing or a name, or prescribe something about his land, which whether he did it or did not would not hurt them or affect their interests but might very much hamper their neighbor, their former co-owner in that piece of land, would be entirely inadmissible and wrong—well there is no sense nor right in it and therefore the law rejects it. It is one man getting his hand into another man's business.

Such in principle I take to be the case now before us. In the State of Virginia, the subject here to be divided, the people of the whole State are the parties interested; and these people either through a convention or legislature which constitutionally represents them all, can alone make the division so far as the State is concerned. The Convention that assembled here on the 11th of June last constitutionally represented the people of the whole State. By the treason of its officers, Letcher & Co., abdicated, and the powers of government becoming forfeited reverted to the people, the source of all power. As the disloyal portion were confederated with the traitors, were *particeps criminis,* equally guilty, they could not take advantage of the forfeiture as it would be taking advantage of their own wrong. I believe the legal gentlemen will agree with me in that respect. The loyal people alone could take advantage of the reversion of power and reorganize the government. The call to this Convention was general—to all the citizens throughout the State—all loyal citizens throughout the State; and it was their fault or their misfortune, which I am as sorry for as anybody, and sympathize with them as deeply as anybody—but it does not touch the question here, if all were not represented. If a county or senatorial district refuse or neglect to send a delegate or senator, there is no power to compel them. Those elected and attending are the Constitutional body and their acts bind all. And so it is with the legislature which met here last summer and are now in session here; it represents the whole people of Virginia.

Now such a Convention and legislature, with the consent of Congress can make any division they choose; and so far as the State is concerned they are like the three men that jointly owned the field. That Convention did authorize a division including the thirty-nine counties, absolutely fixing the boundaries, and by the other section of the ordinance, other counties were to come in on certain conditions. The conditions have not been complied with except Hardy and Hampshire, and I am not certain whether they strictly speaking have complied with them or not. I am on the legal question. The delegates of the thirty-nine counties and of such other counties as complied with the conditions in this ordinance, to be chosen in a mode prescribed were to meet in Convention to form a constitution for the government of the proposed new State—which Convention representing the thirty-nine counties, or forty-one counties, we are, as I understand it.

Now, can this Convention which represents but a small fraction of the whole people remove or alter the boundaries which the whole people, the owners of the thing to be divided, have fixed? It is in principle the third man altering the bounds the three have fixed, without the consent of the other two. The peculiar structure of our government and its name we have full control of; for these belong exclusively to us, the people of the State. The other portion of the people of the old State have no interest in it whatever. But in the boundaries they have a deep and most vital interest that seems to be manifest to us all. Or are you going to remove the boundary and take them all in? Another Convention representing the whole State, or the present legislature which represents all, (See Art. 4, as provided in the Federal Constitution) alone can do it.

The gentleman from Wood, Mr. Van Winkle, inquired yesterday if force had made it impossible for certain counties to comply with—

THE PRESIDENT. The gentleman will recollect that it is out of order to call the name of any member.

MR. PARKER. There being two gentlemen from Wood is my apology. I thank the President for the reminder.

The gentleman from Wood inquired yesterday, if force had made it impossible for certain counties to comply with the conditions, whether that fact would not waive the condition and authorize us to admit them. I say, No. It cannot enlarge our powers at all. Those who imposed those conditions, the whole people of Virginia through their legally constituted convention, or through their legally constituted legislature, can alone waive the conditions imposed and admit them. We have as much power, as it strikes me, over every county in Ohio as we have over these. It is competent and proper it would seem for our Convention here to agree on what we may think to be the wants of our constituents and recommend the same to the proper powers—recommend them to the present legislature or a convention of the whole people of Virginia.

Some gentlemen have suggested that as our whole work of reorganizing the old and forming the new government is revolutionary, this Convention can do what it pleases, even to removing a neighbor's land marks. I deny the premises, in toto. The reorganization of the old State government, and our proceedings thus far in framing the new, are all constitutional and legitimate. When the old government, by treason of its officers abdicated, its powers returned to the loyal people, and the loyal people being all called—as many represented in the Convention as chose to come or as could get here—I sympathize as deeply as any gentleman with those who could not—our question is a legal question entirely. That is the nature of the question, as I understand, now before us; whether in traveling out of the boundaries laid down, we are in view of the conditions of the ordinance, acting with authority or no authority; whether we the creature of the whole people, permitted by them to come up here, can turn round and annul and repeal their acts; whether the inferior. Then and not till then can it be done.

MR. BROWN of Kanawha. Mr. President, it seems to me the remarks of several gentlemen who have favored the striking out of these counties are inhabited by a number of our fellow citizens who have taken the side of secession, and that where they can even find that there is a majority for that idea that that is to be a conclusive ground for the exclusion of the counties and the people inhabiting them, from this fellowship. It seems to me if that idea is to prevail, then we are abandoning the principle in taking the boundary that is prescribed for the thirty-nine counties; for I understood some gentlemen to say in their remarks that they would vote against including any county if a majority of the people in that county were averse to being brought into this State. Now, sir, they have included the county of Braxton —I believe there is none that proposes to exclude it—where they polled some five hundred majority or more for the ordinance of secession, and where but for the armies of the Union a Union man could scarce maintain his residence in the county, because of the hostility of the majority of the people there against the Union. You have included the county of Logan where perhaps a still larger proportion of the people are opposed to the new State. Why? Simply because they favored the doctrine of secession and are resolved if it is in the power of man, to attach and ally themselves to the Southern Confederacy and throw off the galling yoke of the Union. Yet you propose to include them. Go into the county of Boone, and you have the same thing. Go into the county of Wayne—why, sir, you would have to go with an armed force to the court house now to hold an election, and then follow your polls to the Ohio river to save them from capture. And you do not propose to exclude these counties and people, and why? Upon the principle that you adopt they must be inevitably excluded. I want to know, sir, upon what principle you can exclude them. I understand, sir, that the only principle upon which we could exclude these people is that it is not the wish of the Union men of these counties to be in this fellowship. Why, sir, by what authority are you here today? Every man knows that the people of Virginia by a very large majority have voted, if you take the polls at the May election, for casting off the yoke of the Union, as they call it, and allying themselves and their fortunes with another people and another government. We know, sir, that there are two actual existing governments in the State of Virginia today; and that which commands a majority of the people of the State by their suffrages is assembled in another quarter and knows another allegiance. Are we here today representing that people? No, sir. We are here representing the Union men of Virginia. I understand that the very ground on which we claim to be here, is the fact that as citizens of the Union, as loyal men of Virginia, we have a right to hold the government of Virginia in the Union and we are attempting it; and this government by which we are assembled is not an excrescence and outrage on the laws of the land, but only in accordance with them to maintain the rights of the Union people. Then, sir, if that be the reason and ground of this government, though it be in a very large minority of the people of the State—if that be the reason of it, sir, why I ask if there be a minority in the county of Greenbrier who are in favor of sustaining the Union and of uniting in the new State here with the people of these other counties—why should they be excluded on this principle? Why turn them over to the tender mercies of a government that will hang every man who opens his mouth against its authority? These people are under the tread of Confederate armies. Why, you talk about delegates not being here from the counties of Greenbrier, Pocahontas, Mercer and Monroe! Sir, Gen. Rosecrans, with his 28,000 men has not been able to plant his standard within the limits of these counties; and if he cannot go to them, how I ask can the representatives of this people come to us? And yet the gentlemen turn these people over to the tender mercies of these foes. Have we no interest or fellowship or community of feeling with these counties, whose waters from their mountain springs run down to our rivers, and from which we drink daily? Why, sir, have you no interest and community of feeling with them? Have we on the Kanawha no interest with those whose only outlet is through our territory —feeling as much connection with them by everything that makes a people one as with the people in this portion of the State, from whom we are many hundred miles distant, and with whom we have in many respects very little commerce? I want to know, sir, if you are to regard the rights and interests of the Union people upon what principle you exclude these men in these counties now proposed to be embraced? The Creator has built the mountain barriers there and put them on our side of it. He has made the waters flow from them to us. He has planted their mountain country just like ours and covered it with their flocks and farms and herds. They are bone of our bone and flesh of our flesh, for they are our families and neighbors all intermingled. They are not settled by strangers nor people of foreign birth. We have an immediate and constant intercourse and community of feeling with them, and their fortunes and interests are ours, and ours are theirs; and therefore it is that I feel I am compelled to do justice to these people, when they have not been able to be here because the government of the Union has not done its duty and freed these people from the oppressions that now trample them under foot.

If we look at the mountain ranges, there is another view, it seems to me, in which these people have a common interest with us and that a principle of State policy should secure in having them with us; and that is that we stand here, as we may say, on the confines of two great confederacies. We all claim we are citizens within the Union and that they shall never tear asunder the bonds of the Union; but these southern people claim that the Union is already severed and that you never shall spread the flag of the country over them again. The question no longer is a matter of right but of power—can you restore the Union? Sir, you never can do it unless the people of the Union stand by the government and never flinch from the evils and burthens that are necessary to sustain it. We are along its border. Suppose the people of the free States should demur, and the Union was at the end of some two or three years of expensive and ruinous warfare to the whole nation—suppose they should say: we have found ourselves utterly and entirely incompetent to restore this Union as we expected; we are tired of this business; we will drop this thing;

we will turn our members out of Congress and send men there who will make a treaty with these Confederates; we will only look for guarantees of self protection. And then I ask you, sir, if such a state of things should take place—and who, Mr. President, that look at the progress of the war can say that such a thing may not happen? Here are five or ten millions of men saying it shall happen. We are attempting to restore it; and if they were attempting to force their government on us we would successfully resist; and I believe we will resist it and put it down, but then, sir, I am no prophet and it may be otherwise. Suppose then, sir, such a state of things and that there should be an acknowledgment —some great victory on their part or misfortune on ours—that these European powers should ally themselves on the side of this Southern Confederacy and cover the whole waters of the ocean with foreign foes—and it should result in an acknowledgment of this Southern Confederacy—where would we be if we are to have a mountain barrier here and that hostile foe on this side of that mountain? Our fellow citizens along the river may feel somewhat secure, but when you go back to the counties of Wyoming and Nicholas within these bounds of the thirty-nine counties—ask those people what security they will have with hostile armies all around their border and in their midst. Bear in mind, Mr. President, that even Gen. Rosecrans' army does not extend to the interior limits of the thirty-nine counties; that these Confederates are now within the limits of your thirty-nine counties; and that if you ever expect to keep them on the other side of the mountains you must march up to the mountains and then plant your standard and there make the defense. And I say, sir, if we are to have security and peace to our homes and firesides except along the border where you can cross the river when the foe shall come; and I have no doubt some of the gentlemen here who are opposing the introduction of these counties as our security, crossed the river recently to save their bacon when the foe was at hand. But those of us too far from the river have too long a race to run at every driving in of the pickets. And so we want these mountain barriers to secure our homes against the depredations of hostile foes. These are high considerations that induce me to go for it, and other considerations connected with the fact that I know something of the sentiments of the Union people of these counties, and that they will vote as unanimous as the people of any county in the new State for its establishment and for their security in it. They, now, sir, cannot open their mouths lest they be carried to Richmond and there incarcerated for treason. We are legislating now for these Union people, for all the secessionists must either give up or leave the territory. There is no alternative. And then, sir, if you are predicating your whole action on security to the Union men of the territory, the safety of us as a people, why hesitate, when you have extended a condition to these people to have a vote when it was utterly impossible to do so, and when we know the feelings of the Union men are all with us—while we know, too, the secessionists are with us nowhere? In my county, although they are in a large minority, I can say candidly they are as honorable as any man anywhere and would not stoop to do an unworthy act upon any consideration. They conscientiously and honestly believe secession is right and that you are doing wrong in attempting to coerce them; and before they would come into this new State now, so hostile are they to it and to the Union, they would rather be allied to Siberia or Turkey or any other government that you could conceive, than be here in our midst. I say, while not representing them, I know their wishes and feelings, and they are opposed to me and mine. I stand here the representative of the Union men of my county and not her foes, I therefore cannot hesitate when I know the feeling and connections of these people; and I know it is impossible in the very nature of things that they should have their representatives here, unless they steal away between two days and run the gauntlet in order to escape.

The Convention then took a recess.

THREE-AND-A-HALF O'CLOCK, P. M.

THE PRESIDENT. The Chair has a communication from the Secretary of the Commonwealth which he will proceed to lay before the Convention:

OFFICE OF THE SECRETARY OF THE COMMONWEALTH
Wheeling, Va., December 4, 1861.

JOHN HALL, Esq.,
President of the Constitution Convention;

SIR:—I have the honor to submit the following exhibit of the vote on the "Ordinance for the formation of a new State out of a portion of the territory of this State," in the counties prescribed in said Ordinance, prepared under resolution of the Convention, over which you preside.

The returns from many of the counties reached this office in a confused state, but it is believed the result given, is, in the main, correct.

Respectfully submitted,
L. A. HAGANS, Sec'y Commonwealth.

EXHIBIT

COUNTIES	For A New State	Against A New State
Barbour	311	7
Braxton	22	0
Boone	68	0
Brooke	357	154
Clay	76	0
Cabell	209	5
Calhoun	No Returns.	No Returns.
Doddridge	497	10
Fayette	No Returns.	No Returns.
Gilmer	108	0
Harrison	1148	12
Hancock	263	67
Hardy	150	0
Hampshire	195	18
Jackson	225	16
Kanawha	1039	1
Logan	No Returns.	No Returns.
Lewis	464	3
Monongalia	1610	18
Marion	663	35
Marshall	1371	37
Mason	804	83
Nicholas	No Returns.	No Returns.
Ohio	1140	139
Preston	1764	9
Putnam	209	0
Pleasants	198	14
Raleigh	32	0
Randolph	171	2
Roane	131	0
Ritchie	603	7
Tucker	65	0
Taylor	498	10
Tyler	699	15
Upshur	614	0
Wyoming	No Returns.	No Returns.
Webster	No Returns.	No Returns.
Wayne	296	10
Wirt	367	11
Wood	1104	48
Wetzel	664	50
Vote of the 3rd Regiment of Virginia Volunteers, stationed at Beverly	273	0
	18408	781

Whole number of Votes	19,189	
For A New State		18,408
Against A New State		781
Majority for a New State		17,627

MR. CALDWELL. I move that the document be laid on the table and printed.

Agreed to.

THE PRESIDENT. When the Convention adjourned it had under consideration the amendment of the gentleman from Preston, to the amendment of the gentlemen from Harrison. The question is on the adoption of the amendment to the amendment.

MR. LAMB. Mr. President, if there is no other gentleman who proposes to occupy the floor upon this question, there are a few remarks on this subject I deem it necessary to make in order to a proper understanding of it.

I would remark in the first place that I regret the mode in which the question is presented by the motion of the gentleman from Preston. It is but the ordinary course, sir, that a resolution should be perfected, that its friends may present it in its best possible shape before the question comes upon its adoption or rejection; yet the motion of the gentleman from Preston is nothing else but a motion to reject the first resolution, and it might be expressed in so many words. It is a motion to reject that resolution before the different amendments and different suggestions which gentlemen in the Convention may be prepared to make in regards to the proper shape in which the question should be presented have been brought forward. There are amendments to this resolution which I know have been contemplated; one to insert the words: "If the consent of the Legislature of Virginia be had"—"Resolved, That if the consent of the Legislature of Virginia be had," that then these counties be added. Another amendment, I know has been contemplated; to add at the close of the resolution the same clause, the same conditions, with which the other resolutions embodied in the series terminate. We ought, whether these amendments would improve the resolution or not, have an opportunity of testing the sense of the Convention upon the proper shape before we are "coerced" into a direct vote upon the question, shall the resolution be adopted or not? This is I believe according to all parliamentary usage. I make no complaint of the gentleman from Preston of any want of courtesy in this respect, but I think he has brought forward the matter in an unfortunate shape.

Still, Mr. President, the question must be met, whether the resolution is now in its proper shape or not, upon a motion to reject it—and the motion before the House is nothing else. The question must be met; ought the House, in this stage of its proceedings to reject the resolution? In regard to that question there are two or three considerations to determine the proper effect which the passage of this resolution would have. Does this resolution undertake to determine the annexation of the people of these counties without the consent of the legislature? Certainly not—most assuredly not. By an authority higher than any that rests in this Convention, by the Constitution of the United States itself, our action here must be submitted to the legislature of Virginia for its approval. If that consent is not given, whatever we may do is utterly unavailable. Every resolution we pass, every act we do, here bears impliedly at least within it that great condition. It shall be utterly unavailing unless the consent of the legislature is had. If you insert this in so many terms into the resolution itself and make the resolution express a condition, upon the consent of the legislature of the State of Virginia, you have done nothing more than what is now the precise effect of the resolution as it stands before this body. More than that, the consent of Congress is necessary to give vitality to your action. Your Constitution—your claim for a new State, must go before Congress. If not ratified by that body again, it falls to the ground utterly without effect. And more than this, gentlemen, your action must be submitted to the people for their ratification or rejection. If they think you have done right they will ratify your acts. If they think you have done wrong they will refuse to ratify them and again your action falls to the ground. Every resolution, every act, of this Convention—even the provision which you passed yesterday that all votes of the people shall be by ballot—bears upon its face those conditions, if the consent of the legislature and of the Congress be had, and if the people shall ratify it, just as much as if it were expressed and repeated over and over again in every clause. Here, then gentlemen, this resolution asks you, if the legislature of Virginia shall consent, if the Congress of the United States shall consent, if the people shall ratify your acts—that these five counties shall be included within the territory of the new State. I assent to the argument of the gentleman from Cabell, that if you take territory from old Virginia the consent of the legislature of old Virginia is absolutely necessary. If we were disposed to seize her territory without her consent, the Consitution of the United States interposes its veto: it shall not be done "without the consent of the legislatures of the States concerned as well as of Congress", is the language of that instrument. In fact, gentlemen, what you may do in reference to this resolution is nothing more than a proposition, and all your acts are nothing more than propositions to be submitted to the legislature of the Commonwealth, to be submitted to Congress, and to be submitted to the people themselves.

Upon the question of a usurpation of power upon our part, it strikes me that these are grave and important considerations. It strikes me that the question is not that which it has been represented as being by many speakers on the other side: shall this body attempt to seize upon this territory or shall this thing be done if the legislature of Virginia consent to it and if the people ratify it?

If we turn, then, to the third section of the Ordinance of August 20, 1861, as the one which bears most directly on this question, we shall find that that provides that certain territory, which unquestionably, as was said by my friend from Wood, includes these counties, might be included in the limits of the new State by this Convention if the people of those counties at a vote to be held on a certain day should consent to such annexation. Throwing aside all technicalities—throwing aside the provision, the universal provision of law which has been here quoted and which is not merely a provision of law, but which is founded on good strong sense, that when the condition is impossible the performance of it is dispensed with—let us take and construe this section fairly. What did the Convention in August, 1861, when they passed that section contemplate? What state of affairs was in contemplation? Unquestionably, gentlemen, and it is upon the face of that resolution, they contemplated that a vote could be taken within these counties. They contemplated a different state of affairs from that which we found to exist. They contemplated that before this period it would have been possible to obtain a full, free and fair expression of opinion in that section of country. But now, by a strict technicality, we are asked to apply that section to a state of affairs which was not in contemplation of the Convention which adopted it. That third section was adopted, contemplating a different state of affairs from the present. We are asked to enforce it in a condition of things entirely different.

Is this fair, or is it reasonable? Is it fair to put such a construction on that section, or any other construction on that section, than that if it was possible to get a fair and proper expression of the opinion of the people of these counties it was to have been had?

However, this may be, if the people ratify our acts—or if the Convention prefers it, they may require special ratification by the people of these counties—this difficulty, it strikes me, could not longer be in force.

I would remark in reference to this subject that it is known I was opposed to the formation of a new State, a division of the State of Virginia, at that time—I have always been in favor of it—but I was opposed to going into the subject at the time it was; that along with many others who acted with me, I predicted that if the matter was pushed in such hot haste it would be, among other objections, impossible to obtain a full discussion of this matter or a fair expression of the sentiments of the people respecting it; that it was premature. The gentlemen of that convention—very properly, it may be—it is not for me now to impugn the wisdom or the propriety of their acts—told us that long before this period all these difficulties in western Virginia would be removed, and these votes could be taken without difficulty. But we now find a state of things in which we are compelled to apply that ordinance of August 20, 1861, to a state of things which never was contemplated by that convention or at least a majority of it, for to suppose that that convention in inserting the concluding clause of that third section of that ordinance contemplated that it would be impossible to take a vote in these counties, is to suppose that they intended to perpetrate a mockery upon the people there. That resolution contemplates on its very face that when this Convention came to act it would be in such a state of things as would have allowed a previous fair and full expression of public sentiment in that district, and as a rule of construction it is not fair to the convention of August, 1861, to apply the strict terms of their ordinance to a state of things so apparently different from what they contemplated.

I have very few remarks to make upon the propriety of the boundary proposed. That subject was very well discussed by the gentleman from Kanawha this morning, and I concur with him that the people of the Kanawha Valley—aye, and the people of Little Kanawha Valley, too—will find the boundary that is proposed in the first section of that report is essential to their protection. Who will pretend to say what is to be the result of this state of things? Who will pretend to say what is to be the result of the rebellion which is now pervading the South? Can we usurp the attributes of Providence and pretend to foresee the future? I have no doubt myself, with the best lights that we have before us and with my own feeble capacity of seeing ahead—I have no doubt the rebellion must be put down; but it may not be so. And, then, if that by any possibility should be the case, what would be the condition of the new State? Look at the boundary which is proposed by the ordinance of August 20, 1861. Trace it on the map. It is for a great part of the distance a mere air-line, an imaginary line; following no great river course, resting upon no great mountains for a considerable distance. And this is to be the character of the frontier which you are to defend. You want, anyhow, mountain frontier, if the rebellion is put down and the new State is established. You will have on one side of that line—I speak now of what is to be the practical working of the thing, and not of any action which I am expecting the Convention to take on this subject—you will have, practically, at least, on one side of that line a free State and on the other a slave State. The natural course of things will work out that result, inevitably; at least, as well as I can pretend to see, that must be the case; and I would interpose a more distinct boundary than any imaginary line or any air-line between a slave State and a free State. The escaping of slaves across the boundary would be a continual subject of contention. I would have the mountains between us.

With these considerations, gentlemen, I submit the matter, so far as I am concerned.

MR. WILLEY. Mr. President, I find myself, sir, in rather an awkward predicament in reference to this question. My inclinations and desires are at war with the best exercise of my judgment in relation to the rights which this body possesses—the power of this body in the premises. I fully accord with all that has been said about the expediency and indeed almost necessity of this mountain barrier as the line between the two States; but, sir, I think it is a principle of law, a principle of morals, and especially a principle of Christian morality, that the expediency must always yield to the law and to the right. Nature indicates as plainly as the hand of the Creator could write it His intention that in a separation of the State of Virginia that portion of her territory lying on this side of the Alleghanies, especially in that direction, should belong to West Virginia. Inconvenience immeasurable must result to the residuum of population left on this side of that mountain barrier, if they are left in the old state. It is not worth while to detain you, sir, by reciting the reasons so much better presented than I could present them by the gentleman from Kanawha and by others in respect to the advantages both to the citizens of that section of the State and to ourselves in every respect. It is not worth while to detain the Convention by reciting again those advantages. I accord entire concurrence with the views of gentlemen in that respect. But, sir, I do not accord with the sentiment —and I am sorry to see that it has a kind of secret lodgment, a kind of unconscious existence in the mind of any member here— that we are dividing the Union; that we are to exclude the inhabitants of that section of country because they are secessionists, and that in time to come they would be troublesome men within the borders of West Virginia. Sir, West Virginia is in the old Ship of State, and my sentiment is to go down all together and undivided if we are to go down at all. Never, sir, shall such a sentiment find lodgment in my heart; it shall lie cold in the grave before I shall yield to a division of this glorious Republic—a division recognizing the Southern Confederacy—a division destroying the last hope of constitutional liberty—a division burying the prospects of human liberty now and forever in a grave so deep that the long arm reaching from future centuries hence will never be able to disinter it.

No, sir, this Union is never to be divided; the Union is to be reestablished. The Constitution is again to assert its legitimate authority all over this land—all over this Virginia of ours, on the summit of the Alleghanies, on the summit of the Blue Ridge, on the ocean beach and on the Ohio shore — everywhere, Virginia, though she may be divided into two State sovereignties, shall acknowledge a higher sovereignty to the Federal Union and the Constitution of the United States, as members still of the same great Constitutional family.

Let us get rid of the idea, then, of arguing this question upon the remotest contingency that we are to sever from eastern Virginia because peradventure, she may be carried into the Southern Confederacy. There is no "Southern Confederacy", and there never will be (Applause in the lobby) No, sir, no! I admit, sir, that darkness has spread over our political horizon for the time; but I can say to such as harbor in their hearts a hankering for the "fleshpots" of that "Egypt"—for it is in the South—I can say to them as the bard said to our Revolutionists:

> "Fond impious man, think'st thou yon sanguine cloud,
> Raised by thy power, can quench the Orb of Day?
> Tomorrow he repairs his golden flood
> And glads the nations with redoubled ray."

And I thank God, sir, that the storm is abating, the "sanguine cloud" is disappearing, and the morrow's sun is soon to pour upon this country his full ray of splendor. He is even now throwing his evening parting radiance upon the receding tempest and there is painted to the patriot's high hope the bow of peace and promise, and of covenant for all ages to come of Union, peace, prosperity and Constitutional liberty, never to be broken or to be disturbed.

Let us get rid of this idea, then, that we are acting now as if the Union were to be dissolved. But, sir, I was somewhat carried away, and I ought to beg pardon for departing from the subject particularly under discussion.

Let us look for a moment, then, what it is we have to do. And first, sir, perhaps we had better consider who is to do it. Who are we? What are we? What are the limits, the extent, of our power and our appointment? Whom do we represent? The convention which passed this ordinance last August was a convention of the State of Virginia. That convention concentrated the sovereignty of the people of Virginia, but we do not, sir. Their jurisdiction was limited only by the boundaries of the whole State. The people of Virginia through their delegates in that convention, passed an ordinance for the organization of this body; and the limits and boundaries within which we were to be chosen, and within which by the very terms of the ordinance itself our power was to be confined. What are those limits? Whom do we represent? What portion of the people of Virginia has sent us here? How much of the voice of Virginia was heard or allowed to be heard in the selection of this body? That portion of the people of Virginia residing in the thirty-nine counties—or rather in the forty-one counties including Hampshire and Hardy—which have delegates upon this floor. They allowed a larger border; they gave permission to certain other counties to send delegates here if they saw proper but they have not done so. Let us look then at the Commission—let us look at the ordinance itself—that we may ascertain the extent of our authority. By referring to the second section we find it provided that "All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties, on the fourth Thursday of October next, shall be allowed to vote on the question of the formation of a new State, as hereinbefore proposed; (that is for the thirty-nine counties) and it shall be the duty of the Commissioners conducting the election at the said several places of voting, at the same time to cause polls to be taken for the election of Delegates to a Convention to form a Constitution for the government of the proposed State."

Now, then, this Convention thus organized and thus authorized had distinct limitation assigned it. It was to operate with and within a distinct and well defined territory of designated counties. Then that Convention in another section of the ordinance went on to provide:

"The Convention hereinbefore provided for may change the boundaries described in the first section of this Ordinance, so as to include within the proposed State the counties of Greenbrier, and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section."

Well, now, sir, if the ordinance had stopped there, perhaps we in the interpretation of this ordinance and our powers in the spirit of it if not regarding the letter, might have extended our operations; but the ordinance did not stop there. The authority of the people as regulated by the people themselves ordained further the condition by which these counties were to be brought into this body and into the proposed new State. That condition is as follows—and I beg you, sir, and the delegates of this Convention to allow your minds to pause upon this important condition. It is:

"If the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed State, and shall elect delegates to the said Convention, at elections to be held at the time and in the manner herein provided for."

These counties named, and the counties lying contiguous to them, might be brought into the new State provided they would express their assent and consent by voting upon the proposition laid down in the ordinance, whether they would have a new State or not; and also providing that they would send to this body delegates to assist the other members of the body representing the thirty-nine counties, in making, preparing and presenting back again to their constituents a Constitution for their adoption. Now, sir, they have not done it. The county of Greenbrier is not here; the county of Pocahontas is not here; none of the counties included in this resolution are here—not one of them. None of those counties took a vote on this subject. They have not declared whether they want a new State or not; they have not sent delegates here to make a Constitution to be sent back to their constituents for their adoption or rejection. They have never indicated any desire to be here; they are entirely unrepresented on this floor. Now the question is, does our authority, organized as we have been under this ordinance, give us power to act for them? That is the question, sir. It seems to me, Mr. President, that our power in the premises is limited; that we have a commission; and that that commission recites the extent of our powers, and the area around which our authority can extend; and that when we go beyond that limit we go beyond our authority, transcend our duty and usurp the rights which neither the ordinance of the Convention nor the people whom we propose to include have ever intended or proposed to give to us. It would, sir, in my humble estimation be an usurpation of the rights of the people within those counties under the circumstances. They were presumed to be represented here in the Convention of the 20th of August, 1861. It must be presumed by every fair implication of law, then, that they expressed their opinion, or allowed it to be done—because they had the right to be heard—they then did retain certain limits to this State, with certain contingent rights of extending the limits of it. They have not availed themselves of the liberty under those contingent rights and the authority given to them by the offer of that ordinance. They are not here, sir; and I repeat again, in my humble estimation it would not only be a violation of our authority directly as having special authority, a special commission under which to act, but a usurpation of the rights of that portion of our fellow-citizens. It is true, sir, they are secessionists, but still they are fellow citizens—still they have rights under the law and under our ordinance and under the Constitution of the United States and that of the State.

Now, sir, let us see if that is not a fact. I admit in its full extent, the argument of the gentleman from Ohio who last addressed us, that a great deal of the difficulty in our way may be avoided by the authority which the legislature has in the premises; but let us see if there would be not an usurpation of rights of the people of those counties if we include them arbitrarily, as proposed in the resolution under consideration. We include them arbitrarily, suppose. They may be as much opposed to being included in the new State as they were in favor of the ordinance of secession. I understand that in almost every one of these counties the vote was strongly in the majority and in many of them almost unanimously, in favor of seceding from the Union. It is fair to presume, therefore, that they do not want to come into the new State of West Virginia now. We have no evidence of any change of sentiment on their part. We do not know how that is, however; but if they are included and the Constitution which we present shall be adopted, what will be the result? They may every one vote against it; and yet they may be compelled to be included within the State of West Virginia. They may be compelled to live under the Constitution which this Convention ordains although they never had any voice in making the Constitution or in making the new State, because there may be a decided majority in the remainder of the State so as to adopt the Constitution although they may vote against it. Is there no hardship here? If they had been here through their delegates they might have so modified it as to make it agreeable to them; but they are not here. The truth is, it is admitted on all hands, they could not get here if they wanted to come. You do them the double injustice of including them in the new State without their consent and also of imposing on them a fundamental law in the ordination of which they had no voice and in the adoption of which their voice, expressed against it, unanimously it may be, was over-ruled by the remaining voters in the new State. Sir, it is a practical and positive usurpation of their rights; and it does not seem to me that under the ordinance we have a right to include them arbitrarily within our limits. I know it has been said we have already yielded the principle and that we must therefore violate the principle again—that we yielded the principle of having now power outside of the thirty-nine, or forty-one counties, when we changed the name of the State. Sir, the name was our own; is to operate only upon and be for the thirty-nine, or forty-one, counties, included in the State. It is a matter over which the people had supreme power; a matter to operate only on the people of the new State; and they are as supreme here today over their own territory as the convention of August last was over the whole state. Why, sir, if you adopt any other principle we might never get rid of the old constitution at all. The people were supreme when they ordained that, and we are supreme today when we set it aside and make a new constitution. We must keep within the limits in which we have the right to exercise our power. We must not impose a name on territory which is not represented on this floor, and included in the commission under which we act. It is very evident, sir, that unless we get along much more rapidly than I suppose we can or will, we will have to extend the time several months beyond that fixed for the presentation of the Constitution for the people to vote on. We have a perfect right to do that, because we present it to the people we represent, within the limits of the territory included in our Commission, and within which our authority is supreme and our control complete; and because the former Convention had no right to limit or prescribe the length of time this Convention should be engaged in framing a Constitution. Like naming the State, that was something with which they properly had nothing to do. They could not be supposed to know how long a time we might require, for it might be longer or it might be shorter from the interposition of circumstances over which neither they nor we could have any control or which neither could anticipate. I think, therefore, sir, there can be no difficulty on this ground. But, sir, it is a very different thing when you travel outside of the record; it is a very different thing when we begin to include territories not represented here, not specified in our commission. I would be glad to include them; but it seems to me the letter of the ordinance is directly in the teeth of our power to do so; and, sir, we profess to be the friends of law and order; we profess to be the opponents of those revolutionary principles that are turning the world upside down; and professing such principles, and acting under them, Mr. President, however much I would desire to enlarge our boundary and include those counties within the limits of the proposed new State, yet I cannot forego the conviction of my understanding that we have no authority to go there. We may very much desire our neighbor's farm, but ups and downs and confusion and anarchy of revolutionary times will not authorize us, by the laws of God, of nature, of nations, or of men, to seize upon it and appropriate it violently.

Cannot we avoid the difficulty and yet secure the advantage? That is the question. I believe, sir, under the rules, when there is an amendment to an amendment, the privilege of amending is exhausted; but it is perfectly in order to indicate what might be inserted in place of an amendment or amendments if they were all voted down. I acknowlege, sir, that the suggestion of the gentleman from Ohio who last addressed us a short time ago, had occurred to my own mind; and it seems to me it suggests the only practicable mode by which we can escape from this difficulty, that is that we will place these counties upon the same hypothesis we have placed these other counties. Now, sir, we must have these counties. I am free to express my entire dissatisfaction with the boundaries as laid down, including the thirty-nine counties. I am free to say it is not the boundary which nature has prescribed for us. Not at all, sir.

And, here suggests to me the true grounds on which our claims for division are to be predicated: not because there is to be a Southern Confederacy; not because the East is full of secessionists. All these schemes will be put down ere long, I trust, and we will all be in the Union again and all at peace. These are not the grounds on which I think the new State presents its just claims to consideration. Not at all, sir. We will be one people again; and so far as our Federal relations are concerned, I trust the day is not far distant when we will all be in harmony again and all in Union acknowledging the Federal Government as of old time and discharging our obligations dutifully as good citizens of the State and Union. But, sir, the claims are geographical in their character. As a State we have not the same identity of interests; our social relations indicate the necessity of a division; our geographical position indicates the necessity for a division; our industrial interests and commercial connections all unite in declaring an absolute necessity for division of the State of Virginia, for our own local convenience and interest; not because we wish to separate from our brethern in the East—not because we are ready to abandon the government—to acknowledge in our hearts that there will be a Southern Confederacy or even the remote contingent possibility of such a thing. I will never acknowledge that, sir. Through the South everywhere and especially in old Virginia, as I know well, there are this day thousands upon thousands of as loyal men, as loyal to that flag, as any whose eye looks upon those stars and stripes at this moment (Referring to the American flag suspended over the President's desk) and with hearts that beat as true; but they are under durance, they are in virtual imprisonment. We do not want to separate from them, then, Mr. President, because they are secessionists; but because we want to dissolve social, political and municipal relations with them; because our convenience as a State and territory, our interests in a commercial, industrial, social and geographical point of view, have for thirty years past been a standing, irrefutable, everlasting argument that we ought to be divided as a State, though united as a people under one common Federal head. That is the ground of the argument, sir.

Well, sir, upon that argument we ought to have these counties. I acknowledge that. The question arises how are we to get them? The argument will be urged I have no doubt, if we have no authority to transcend the thirty-nine counties represented here, how can we make even a hypothetical proposition to those counties to come in? I acknowledge that we cannot bring them in; that under our authority we have no power to include them, to bring them in. But the gentleman from Ohio has suggested a plan by which they can be brought in: we can ordain a Constitution and respectfully ask the legislature so to legislate on the subject as to present it to them for their suffrages; and if they come under the contingency presented in the other two resolutions following the one we are now discussing, then the legislature when it takes action on this subject, for it must take action on it before it goes to Congress, can fix and define the limits of the State exactly and according as each county shall vote to come in; and the proposition can go up to Congress without any difficulty. I would say to certain gentlemen that if the legislature acts upon it, boundaries can be fixed and defined. We shall then have included in our new State a willing constituency, a willing people, a people that have voted to come in; and by this arrangement the difficulty which I have suggested in regard to an absolute, unconditional taking of these counties in will be avoided.

Why, sir, if it be true, as my friend from Kanawha has abundantly demonstrated, that it is the obvious interest of the people within these counties contained within the resolution we are discussing now, to come into the new State, have not they intelligence enough to see it? And will they not see it? After the terror of arms is removed from them and they are relieved from their present embarrassments—after it shall have been demonstrated by the success of our arms, now soon to ensue, I trust in God—and I trust this thing will be an argument they have never yet had that the power of the Federal Government is supreme in this land, that the power of the Federal Government is to be supreme, over them and over every inch of our soil now and forever—will they not, seeing the utter hopelessness of a Southern Confederacy, the utter futility of their pretensions in this quarter, will they not then, relieved of their present military embarrassments and terrorism operating on them, and relieved too of all the miserable, cruel hopes that they may have indulged as traitors to the country to break it up—will they not see that their interests are with us on this side of the Alleghany mountains and be willing to interpose that barrier as a state line, casting their fortunes with us with whom they have social, commercial and industrial relations, connections and identity of interest? I understand my friend from Kanawha to say that in Greenbrier, at least, he has good reason to believe that if those forces that are there—the terror of arms, were removed, there is an abundant Union sentiment there yet, that it might be revived, and that the old attachment to the Union would come back again and that those hills and valleys would be loved again with loyal hearts. At any rate, sir, I do not see that we have the right to include them within the operation of our power here unconditionally. Let us make a Constitution for them, and let us request the legislature to present it to them and then submit it to the legislature afterwards, if they shall adopt it to fix the limits of the new State which shall be presented to Congress for its action.

Sir, I have hastily passed over a few items that suggested themselves to my mind in regard to this matter. There are many other considerations, no doubt so obvious that they occur to every member's mind, and I will not detain the Convention by referring to them. But I wish before I sit down to express the hope that we will get rid of this unconscious kind of an expression that somehow or other, there is going to be a Southern Confederacy. That cannot be! No, sir, cannot be! (Applause in the lobby and on the floor). And if there was, what would be the result? Why it would not make any difference to the Alleghany Mountains. If Virginia goes south, she goes south—all goes south. If there is to be a Southern Confederacy, I imagine there will be no division of Virginia unless we take it by force and power; and if this has to be employed, my plan is to preserve all of Virginia. And today, so much do I love Virginia—and my friends, the "fleshpots of Egypt" to the contrary notwithstanding I do love it (Laughter) —I love old Virginia from her seaboard to her panhandle—the sacred dust in which the Father of his country reposes—the shades that throw their umbrage o'er the Sage of Monticello, and the leaves that grow around the tomb of the Father of the Constitution, and the dust that is carried on the breeze unconsciously over the remains of him who gave the impulse to the ball of the American

Revolution—from Norfolk, and loyal Accomack and loyal Northampton, now again returning to their allegiance, to Brooke in the upper extreme, and all the valleys and mountains between—I love her all—I love her so well that my right arm shall be palsied in death and my heart cease to beat before I will willingly yield one inch, one iota, one grain, of her eastern sand or one leaf of her laurel mountains, to the fell destroyer. All shall be preserved—preserved forever under the stripes and stars. If not one Virginia, at least one country, one Federal Government. And it will be but a multiplication of Virginias if we get a division of the state—another star upon the azure folds of our flag to cheer the eyes of freemen here, now and forever elsewhere throughout the world. Sir, let us divide Virginia, but for God's sake let us not divide the Union nor entertain any sentiments that could be construed in that way.

MR. STUART of Doddridge. Mr. President, I must say for one citizen of West Virginia, if there is to be a Southern Confederacy, my West Virginia will never be in it although the east is—never be connected with their abstractions, sir, with my consent as long as I stand on the soil of West Virginia.

Mr. President, this question has already been elaborately argued, and I do not propose to detain the Convention but a few moments.

The only question of importance before this body is the legal question; and I am sorry, sir, that we have not got to decide the question between us. It seems to me, Mr. President, we have lost sight of who are the contracting parties here. I understand, Mr. President, there are but three contracting parties to this proposition; the people who propose to form a new State, the Legislature of the State of Virginia, and the Congress of the United States. Now, sir, if any action we propose to take here violates any of these Constitutional provisions, then I am willing to vote for the amendment of the gentleman from Preston and go against the resolution. But, sir, I understand that we are the people—that we are the people that propose to form a new State; that our initiatory steps are that we form a Constitution to be submitted to our people; that we then ask the Legislature of Virginia for their consent, and if we get that consent I do not see how on earth we are violating any constitutional provision. The gentleman seems to stick to the ordinance of last August, and says we are going outside of the ordinance that convened us here. That convention as I understand it was a convention of Virginia, and was no party to this contract at all. Is it so? Could they be? I understand it that the Constitution of the United States, which we all profess to be governed by is this: that if every man in the State of Virginia had come up here and said they wanted to divide the State of Virginia, it was still absolutely necessary to get the consent of the legislature to bring ourselves within the purview of the Constitution of Virginia.

Then, Mr. President, if we are the people, and in our initiatory steps we are forming a Constitution to govern the people of West Virginia, and we submit that Constitution to those people and they adopt it, are we going out of the purview and intent and spirit, and letter, even, of the ordinance of August, 1861. The gentleman seems to object to it from the fact that we may include some persons that are not represented on this floor and that they may have a Constitution forced upon them not of their choice or adoption. Now, sir, see how that rule will work.

MR. WILLEY. I perfectly accord with the resolutions, the hypothetical resolutions, to include these or other counties. It is only this resolution—so much of it as proposes unconditionally and forever—

MR. STUART of Doddridge. I understand the gentleman perfectly and that is that in submitting the Constitution, should these people not be represented on this floor, the Constitution may be adopted with the boundary we lay out here and thus forced upon them although they may vote against it. That I understand to be the proposition of the gentleman. Permit me to say that I was going to show you how the principle would work out. We have lived under a constitution for the last ten or twelve years that a majority voted against. My friend helped to make that Constitution which was forced on the people, and voted against it I understand when it was submitted to the people of western Virginia. The people of my county voted against it. Then sir if we are to include nobody but those who vote to adopt the Constitution why we may have a very meager state, indeed. I understand some of the thirty-nine counties are not represented here on account of the rebellion and rebellious feeling in those counties; and if the question was submitted to the people of those counties whether they would have a new state or not they would vote en masse against it, and will vote against our Constitution. Then, sir, will not the same principle work out towards them, and will they not be compelled to live under a Constitution not of their choosing and not of their adoption, made and formed, sir, when they were not represented—still they were forced to live under it? You see that principle will not do.

Then, Mr. President, if in our initiatory steps before ever we reach this second party to this contract, we lay off a boundary and frame a Constitution and submit that Constitution to the people within these proposed boundaries, we then go to the legislature as one of the parties to this contract and the legislature has it in its power to refuse to admit us or to admit us. Now my friend from Cabell said, that where there were parties to a contract one party would not have a right legally to change or alter that contract without the consent of the remaining parties. Now, sir, I want to ask that gentleman, who are the parties to this contract, who are to be consulted upon this contract? I insist, under the Constitution of the United States, as I before stated, the people who propose to form and adopt a new state and make a Constitution for themselves are one party, the state legislature is another party, and the Congress of the United States is the third party. Then, sirs, if we get the consent of the people of the first part and the consent of the state legislature of the second part, and the consent of Congress of the third part—I ask the gentleman from Cabell, what party's rights do we infringe. They are all consulted. Without a perfect agreement of the three parties we can never get a new state.

Now, I must say that I would be in favor of the hypothetical proposition as indicated by my friend from Ohio and the gentleman from Monongalia. If I had positive assurance that the people of these proposed new counties to be adopted here would have an opportunity of expressing their views and pleasure on being made a part of our State; but unless I have the positive assurance that this thing is to be submitted to them and they go to the polls and vote on it, then, sir, self-preservation is the first law of nature, and I want to include them because I look upon them as vital to the interest of our new State to be included in the proposed boundaries. I have no doubt in my mind if the proposition be submitted to them that there are to be two states, West Virginia and old Virginia, that these people would vote to go in West Virginia; but unless I could have positive assurance that the question could be submitted to them I should be compelled to go for including them anyhow. Can we assume that the opportunity would be afforded them as soon as it would be necessary for them to have it? We want to press them in here because we wish our proposition to go to Congress during its present session. Now who can give us the assurance? Who can stand up here and say that the people of Greenbrier and Monroe and Pocahontas can have an opportunity of voting on this question before you want to submit your Constitution to Congress and ask admission? After you have done this thing and are once received as a state by the Congress of the United States, then, sir, it is too late. You never, never can get these counties; because you cannot get them without the consent of the legislature of old Virginia, which every man on this floor knows never could be got.

Now another proposition just for one moment. My friend from Upshur seemed to object to taking in these counties—whether it is a legitimate argument or not he makes it, as an objection, and it may be the reason that induces the gentleman to vote against the resolution and for the amendment—and that is, that he is opposed to "coercing" these people into a state not of their adoption or their choice, that it always goes to strengthen a government by the consent and agreement of the parties who are governed. Now, my good friend, that is secession doctrine; and carry out the proposition, sir, and we ought to lay down our arms and say to these people in the South: here, go on, you have a right to choose your own government, and govern yourselves, and we will have nothing to do with you. But I go for a little coercion. The principle, I understand, why the general government is now coercing these states is, because they are of vital importance to the remaining portion of this Union. Now, if we can show—and I think it has been shown to this body by my friend from Kanawha and other gentlemen—that it is of vital importance that these counties be attached to our State, why then, sirs, I hope gentlemen on the principle on which our general government is now acting will go in for trying a little coercion even although they do not like it.

Now, that is my view of it. As I promised I would not detain the Convention but a short time, I have merely thrown out these suggestions with a view to correct some false impressions, as I thought, that had been attempted to be forced upon this body.

MR. HALL of Marion. I do not desire to detain the Convention with a speech. I trust that we shall hear from others more competent than myself to debate or to argue the question of the legal right involved in this case. I would make in addition to the suggestions that have already been made a few suggestions only. I believe it is conceded—at least so far as I have heard any expression of opinion on this floor, it is conceded that there is a necessity, an absolute necessity, that the counties within the proposed boundary should be within the State of West Virginia. My friend from Monongalia—for whose opinions on any question, and for whose legal opinions especially, I have that respect that I would scarcely venture to entertain opinions adverse to them, unless I could see or understand that he had misconceived the effect or position of affairs—as I conceive he has done so in this case. Now, I beg to say, in this matter, as I said once before on this floor I am a coercionist. I would not coerce an unwilling people within our borders whose interests I knew were not identified with ours; but I ask now, on what hypothesis is it supposed that any part of the population of these counties will be opposed to the formation of this new State? We find the answer to that question in the drift of the argument of most of the gentlemen who have spoken on this question. They invariably run off as to the question whether a majority of the people are secessionists or are loyal citizens.

Now, I beg to make one proposition which I believe is a sound proposition, legally, morally, and in any form you may take it, and that is this: if every man but myself in the State of Virginia were disloyal and sought to destroy the government of the United States, I have a right under the Constitution of the United States, to invoke the whole government to come and do—What? Why to protect the State of Virginia—even myself. I say in that case I am the whole State of Virginia. Am I not right? I ask if any but the loyal population of this State are any part of the government or have any right to demand anything at the hands of the government. But I ask you if I be the lone loyal citizen if I am not entitled to demand of the Federal Government to come to my aid and sustain me, and to drive out every other inhabitant of the State and to place me in absolute possession of the State of Virginia? (Laughter) its sole lone inhabitant, "lord of all I survey," if you would have it (Laughter). I maintain now that is a sound principle. We are acting on that very principle when we say that we care not what may be the vote of the people of the State upon the question of secession or loyalty. We say that majorities rule within the Constitution, but that the Constitution is made to protect minorities. Well now let us take that, if that be true. Here we have some four or five counties that are upon our side of this natural barrier, to which reference has been frequently made by most of the gentlemen who have spoken upon this question. Now, sir, if there is any element that would be opposed to us there, it is simply the secession element, growing out of the fact that within this territory they have those pleasant resorts called "the springs" to which each summer have come up the South Carolina gentlemen who have sown their seed of poison there. Now, are we to be required to allow them this foothold on this side of the Alleghany mountains, and to forego our real interests and disregard the interests of the loyal people of those counties, because forsooth there are disloyal persons there? And as remarked by some other gentleman who has already spoken upon the question, if you are going to adopt that principle, what are you going to do with many counties already included. We do include them with the right to include within our limits and lines, counties that have no disposition, not a single man of them, forsooth, that would be willing to go with us; and yet we have a perfect right, and they say because of the necessity we must do it —counties that would not send a representative here, that would vote against any constitution we should make, who would vote against everything but his honor, Mr. Davis, whom they dignify with title of President of the Southern Confederacy. Yet we would include them. Now I say if that be true—and that is true —we are acting on that very principle and recognizing it as right. I ask, then, where is the legal objection to recognizing a similar necessity of extending our lines to the top of the Alleghany mountains. It is all one and the same as though that district proposed to be included here were immediately in the center of the territory out of which we propose to make the State of West Virginia. I think there is no doubt of that.

But it is said that the legal objection arises in this particular; that we are limited, that some power that has gone before us has prescribed what we may do and what we may not do. Well now, I beg to suggest this thing on that point: I ask when was there any convention upon this subject that represented more territory than is now represented on this floor? We may say we had a representative from those counties away down about Alexandria. There, I believe was one. They are not on this floor, and it is not proposed to include them within this boundary. But it is said the other convention was a convention of the whole State and we are only a Convention of particular counties. Well now, I submit this thing: suppose we never had any convention at all;

suppose we had never called any convention—have not the legislature of the State of Virginia now in session in this city a perfect right and power to do all that they can do under our conventions? We are here to form a constitution. A constitution must be prepared and submitted to Congress before we can get the consent of Congress, one necessary step. The only parties named in the Constitution are the legislature of the State and Congress. Now this is all. We have our conventions because we choose to consult the people. I think I am right about this. If that then be so, there can be—for this is a mere advisory matter; there was no power in the body by whom we are convoked—no power to limit or prescribe what we should or should not do—if that then be so, in what respect should we feel trammeled in our action now? I referred before to the fact that we are as largely represented now as we would have been had we issued a proclamation calling upon all mankind to meet us here—all mankind within the whole State of Virginia. Who else could get here! Those that we have authorized to come have not all got here. Why? We understand and know perfectly well the reason why these counties are not represented here. Why, sir, it has not been very long since some gentlemen who are here now could not have come here, and the time is even yet that some gentlemen within counties included here are not here; and we know very well the reason why the very counties in reference to which we are now proposing to take action could not be represented here if they would, unless some one had stolen out, as some of the counties now represented here are represented by a very few votes, or by some means that is not exactly a vote at all. I want to know then if that is to be a great overpowering and controlling reason why we shall or shall not do one thing or the other in reference to them. Now it occurs to me when we know what the interest of that people is; when we know the fact —and there is no controversy about that—that the loyal people of these counties whenever they are permitted to speak on the subject at all will be for forming a part of the State of West Virginia—then we are violating no sentiment or rule of propriety whatever. And I am opposed to any provisos in reference to these counties that are now proposed to be included; because of the necessity of including them I maintain we must do it; and if there are disloyal persons there who do not like our company, let them go beyond the lines; we will have enough who will not go to amuse ourselves with anyhow.

If then there is no legal objection, there is no controversy on the other question. It does strike me that it is impossible that we shall be placed in this case under any necessity of violating any legal rule by doing anything that we see cause to do in this matter. Suppose we draw the line with the Blue Ridge and the legislature should consent and take that Constitution and present it to Congress and ask Congress to make a new State of West Virginia, going to the Blue Ridge—I ask is it not competent for Congress to do it? Though we make the Constitution for only ten counties or one county, have not the legislature power over it? Well, it may be asked, then, if the legislature have that power why are we squabbling about it? For the very reason that I desire we avoid the difficulty there that now exists here, the idea that there is some controlling power, something like a construction. The legislature may feel somewhat trammeled; they may be inclined to think that they are bound to act upon the matter without any modification or change, just as we present it to them; and I suppose they will want to so act; they will consider that this Convention is more directly from the people—that being the people in legal contemplation (it being an assembling of the people in person) they are the party to act, and they will feel inclined to circumscribe their action to what this Convention may do. Therefore it becomes us to do what is necessary to be done. But I trust we are not to draw a line and form a new State with a line that is like an irregular saw-tooth line, running round counties with all sorts of curves, having no natural lines—but to draw it upon what hypothesis? Why simply to say that at the time a certain portion of the citizens of the State of Virginia were enabled to congregate themselves at the city of Wheeling, and at a time when those in rebellion against the Government held other parts, these few persons seized upon the opportunity, and being very impatient they went to work to form themselves into a new State including a few counties, but presuming that because the other persons whose interests they knew were identical with their own, suffered the armies of the rebellion to remain in and upon their territory for that reason concluded that those other people were unwilling to come with them. Now, is not that the effect of it? Is it not taking a crumb now, not what you want—not what you need, but with a sort of eager hunger seizing a part of what you want before there is a possibility of those who would come here being with you? And then arguing that very impossibility as evidence that they do not want to come with us? Now, it is unjust.

There was a time, sir, when this part of the panhandle could have held a convention and formed itself into a new State, and left the rest of us without cooperation; but would that have been kind of them? There was a time when they might have extended the line further and never have taken in half your thirty-nine counties. Because let me say a fact that is known, that this thing commenced at a time when some of the most prominent movers in the matter dare not go to their homes. The thing has been crowded along rapidly; and now it is proposed to exclude these counties because, simply they cannot be here with us. Now is that just? Is it just to any portion of that people? Why it is an admitted fact, a fact that all know, that so long as we had any means of having notice from them at all, a large majority of those people were loyal, and whenever they are permitted again to speak and act, they will give evidence of that loyalty to our government; and as there will be no other influence to lead them in any other direction, they will be ready to come with us. And yet by your hasty action, your red tape, your anxiety not to crowd upon them a constitution that they have not helped to make, you will absolutely turn them out, exclude them, cut them off from you so far as drawing the line would make the difference—exclude them by this action altogether. I think it would be unjust—unjust to them, unjust to ourselves, and I cannot conceive upon what hypothesis when we recognize the fact that it is necessary to include them within the boundary, and recognize that other fact that where it is necessary we have the right so to do. I want to know for what reason they are to be excluded? Simply because they happen to be on the border? If the necessity exists it is all the same as if they were in the center, as I before remarked.

And I have this objection to leaving it to a vote of that people: we must necessarily have a dividing line without waiting until that people may be able to act freely and untrammeled on this question; and therefore knowing their position and their interests and our necessities, it is necessary that we cut this red tape.

MR. WILLEY. Will the gentleman allow me a single remark. In regard to defining the line, the legislature have necessarily to define and fix a line unequivocally before application can be made to Congress for admission; and the hypothetical plan proposes, as I understand it, for the legislature to wait until we get the vote from these counties, and then fix the line according as the vote from these counties shall indicate the desire of the people. So I think there will be no difficulty about the want of a fixed line.

MR. HALL of Marion. I do not know, indeed whether Congress would receive us with a sliding border or not.

MR. WILLEY. That is not the idea. The idea is that our legislature fix irrevocably and definitely the line; which they assent to themselves and send on to Congress for its assent; but will not fix that line until they get the votes of that district and include or exclude it as the people there indicate their desire.

MR. HALL of Marion. Well I do not know whether it would be competent for Congress to accept the State composed of thirty-nine counties with a provision to receive or take in the other counties before a vote or not; but I presume they would not do a thing of that sort.

MR. WILLEY. The gentleman does not catch my idea. The gentleman from Marion and I understand each other. We were raised in the same valley up there and of course we have common peculiarities (Laughter). This is the idea I wish to convey: that there can never be any hypothetical proposition made to Congress; that before the proposition goes to Congress, the State must fix the thing definitely, that is to say, they must fix limits which shall either include these hypothetical districts permanently and irrevocably or exclude them. No hypothetical proposition can be, or I think ought to be, sent by the legislature to Congress.

MR. HALL of Marion. I suppose it is contemplated that it will be determined just what the State is to be before we ask Congress that it may be made a State. I do not know that Congress would not have a right to act otherwise but presume Congress would not; and for that very reason that urge the necessity that this matter shall be fixed definitely now; because if the legislature is to be bound by that vote, and that vote is to be taken as early as we would like action should be had on this by Congress, these counties must be excluded, for it is almost reduced to an absolute certainty that there can be no expression of the will of the people within such time. Then to propose to wait for an expression of that people would just be like ours would be Union men down there at Richmond. They were for the Union with an ultimatum to be laid down by Virginia, to be acted upon and accepted and adopted by the States within a time they could scarcely hear we had presented an ultimatum. I think it would amount to nothing. We see here that the members of this Convention from this region of country are anxious that this thing shall be made as early as possible and submitted to Congress that we may have our State in successful operation at the earliest possible time. And I apprehend that there will be no possibility of opportunity for that people to give an expression of their opinion or vote upon this question until the rebellion has been swept entirely out of the State of Virginia. Whenever they have to give back from these points it will be when Virginia throughout is cleared out. Whether that could be in time we do not know. I hope it may be; I believe it will be before very long; but then we know what our speculations have been and how much they amounted to before. We hope and expect it some time; but I cannot say that I either hope or expect that there will be such a movement of our forces as to enable the people who ought to do so, to cooperate with us by the time fixed. There are persons here who did hope and expect they would be at liberty to act with us at this time. Now we see what the fact is. These war horses move very slowly; and we cannot tell what may be the policy of those conducting these affairs, when they will be permitted to act.

Then, as I before remarked, I would not care whether those people desired to come with us now or not—that is whether they gave any expression. We have the right to include them, and the necessity requires that we should; and there is no objection to the rule; and the very fact that we know they cannot give an expression would be our warrant for acting on our knowledge and their real interest and the identity of their interests with our own. I can see no legal objection whatever. I would not be a revolutionist. I believe in doing everything right, and that we should not act merely from a desire to have what we had no right to or rightful means of obtaining. In view of all this matter I trust, upon the mere absence of representatives from these counties on this floor, when it is a fact known to us that they could not be represented here by any means, we will not thus reason, as has been suggested here, that it was a fair inference because they had not complied with the proposition submitted to them by the August convention, they had by their absence from this floor declared that they had no disposition to come with us. Now, sir, that is unfair. It is unjust to themselves; when we know that there are other reasons and that they could not get here. And I trust that we will not act upon any such hypothesis. Every evidence that we have from that people indicates that whenever they are relieved from the power under which they are held there that they will be with us. As I before remarked our necessity requires that if they are not with us in sentiment, in all events their territory must be with us, though it should lead to the necessity of a very considerable portion or even all of them going to other territory. There will be ample opportunities for shuffling those who have different views and feelings about these things.

Now, I am like my friend from Monongalia, I am not looking to a line here as being a line between the Southern Confederacy and the United States. If I believed there ever was to be a Southern Confederacy, I would not give you ten cents a dozen for States situated as this is. I would not give you the expenses of the sittings of this Convention a single day for your State. Now, I have no such idea; but this thing will exist; there is a feeling in eastern Virginia, in what will be old Virginia when this new State is formed, just as you will find will exist in those cotton States, more or less of a feeling that will not be the kindest for a time; and for that reason we ought to have natural barriers that we may not be led to increase that feeling, that irritation, that will more or less exist along all these lines and borders. And thus it is we want these well defined lines, drawn by nature and including those whose interests are with us; and that we shall not upon a false supposition, upon a basis that we know it will not do to carry out, of excluding counties that are not represented on this floor, but that we will include absolutely those counties that are proposed. If we are not to do that—if we are to leave these counties to determine what course of policy they will take here, then we have a tier of counties beyond that we also propose may become a part and parcel of us, and they will take action and determine to go with us, and then you have Greenbrier and Pocahontas between you and them. I want that we draw a line by natural boundaries, and as I before remarked, I would not be governed even by county lines. I like the suggestion of my friend from Harrison, to follow the natural boundary through a county. I would not be turned aside by any supposed boundary you could make, but follow straight along after the natural boundary and make a respectable line and work right up to that line, and at a point that would include those whose interests are with us and whom it is necessary we should include with us, and nothing further.

We must do one thing: we must act on this. If we do not the legislature can; but if we attempt now to determine that we are limited in our action by the convention of August, and at the same time declaring we are the people in their majesty, then we hand it over to the legislature, telling them, you are an inferior body; you may pass on it according to the information you may receive relative to the wishes of these counties; and thus you send it down to them trammeled to the prejudice of the interests of the whole people. I trust we will do no such thing—that we will go to the natural line.

MR. BROWN of Kanawha. I beg leave of the Convention to say a word or two upon this question of the power of the Convention.

I think, sir, it cannot be questioned that this is not a sovereign Convention—that this Convention is a delegated body for a particular purpose, has a special agency to perform—that we are emphatically a body assembled here to propose, not to enact—that we came here delegated by our constituency to frame and propose to the people a constitution, not to *make* a constitution—that the Constitution when it shall have passed from our hands will be as powerless and as worthless as the paper on which it is written until it is endorsed and ratified and vitality given to it by the voters of the proposed State. Our business is merely to frame and propose a constitution—for what? First to obtain the right of the suffrages of the people, the endorsement of the people; next to obtain the consent of the legislature for mark you we can form no State until we have received the assent of the legislature of Virginia. The very object, then, is to propose something here that they may look upon and act upon. Now when we are proposing a constitution to the people, is it beyond the prescribed limits for us to propose a boundary to the people to whom we are about to submit it? If we are to ascertain and ask the consent of the legislature to this proposed new State—without which we can have no State—is it not proper that when we ask the legislature for their assent, we should at the same time propose to them something definite—that we ask to define the boundaries that we propose this State to be composed of, and ask their consent to it? Why, sir, are we to suppose the legislature of Virginia will be so anxious that they will propose to us a boundary when we do not ask it ourselves? My idea of the true function of this body is that it is to propose a constitution to the legislature, at the same time prescribing the boundary that we desire it to operate upon and ask their assent to it; and if they approve it, they will give it; if not, they will refuse it. But I cannot conceive the legislature will ever undertake to propose to us any boundary unless we ask it. We should fix it here and ask it; and in no other form could we have a definite answer.

But, now sir, as to this territory proposed to be included. It has been said by my friend that he is averse to taking these people against their consent; and so would I be. It is said by another gentleman that the White Sulphur Springs, the Blue and Red and Sweet Sulphur, and a number of other springs, are located in these counties, and that there these delectable gentlemen come up and luxuriate in the summer evenings, and in the shady bowers during the heated days in summer, around these fashionable watering places. Why, sir, are we not to be allowed to go up there and drink out of those fountains of health and breathe the pure air of the mountains? That is our accustomed place of resort for the summer. The people of our valley go there every summer. Many of our people are owners of property there. The people of Kanawha own largely in those very springs; and it may be very possible and I think very probable, that my colleague in this house, if not now, has been, an owner of stock in the very springs now to be appropriated by others. Why not go then where we have been accustomed to go, and associate with people whose habits and associations we are familiar with? Gentlemen say they will not vote to come in with us. Why, sir, all we ask is that you give them an opportunity. We say if you propose that they shall not be allowed to come into this State at all unless they cast a vote in favor of it next April: that may be an impossibility as it was before. You said they might vote in October last—but how was it possible for them to vote? You sent no army there to remove the force that was trampling them down; and is it to be any better then? Why, sir, we are proposing to take in the county of Monroe and I understand by the papers that Gen. Floyd is quartered in that county and proposes to stay there in winter quarters until next year. You propose to take in the county of Greenbrier and a rebel army is at Greenbrier until the next campaign shall open. And do you expect your armies will be able to advance before next June into that mountain region? When I was there last, the mountains were all white with snow although there was none in the valleys. I say then you are proposing a thing to these people that is impossible. You do not propose it to the secessionists, because you know they will not vote to come in. They abhor the Union. They abhor all those who hold to the Union. Our message is to the Union men who seek and desire to be with us; and we maintain that there are not a few then. If you would take this boundary in and tell the people to vote themselves out if they choose, then the secessionists would have no difficulty in going to the polls and voting themselves out. They could act, but no Union man could vote. You must have the Union armies in that territory before they can express their sentiments; but as long as you fail to do that it is an absolute denial of every privilege of this people unless you adopt this resolution here and take that territory in. If you find afterwards that the Union men are not with us, then you can let them go; but if ever you close this State and leave this territory in the old state, my word for it no matter how anxious they may be, they will never have the opportunity allowed them.

Well, then, to my mind it is only a matter of policy and interest, and feeling towards these people. It is the last, the ultimate opportunity. It is now or never.

MR. LAUCK. I do not wish to inflict a speech on the Convention at this late hour; but I desire to throw out a suggestion. There are grave questions, and many of them, connected with the question now before this body. When this ordinance was passed, sir, there were thirty-nine counties taken within the limits, but at the same time that convention invited divers other counties to meet with them here in deliberation. It is admitted by all that they were physically prohibited from holding their election and from being here to participate in our deliberations. Sir, under these circumstances, is it fair, is it just, that this body would attempt to decide on their interests in their absence? Is it fair, sir, for us to act in the premises; after having invited them to consultation, and having invited them to come and be a part of our State, for this body to take action upon the presumption that they do not wish to be with us? Sir, as they have been invited to be with us, and participate with us and be a part of West Virginia, I say is it fair, is it just, for us to jump to the conclusion that they do not wish to be with us? No, sir, I take it, sir, the presumption is when it is admitted that they labored under a physical disability to hold their election, that they wish to be here; and it is admitted by many members of this body that there are many loyal citizens within the territory of those counties.

Now, sir, for this body to act in the premises after having invited these counties—I say we ought to give them an opportunity before we act in the premises to cut them off from all share and lot in this our new State. I therefore under these circumstances will be bound to vote against the resolution now before the house. I do not feel, sir, willing to cut them off from a privilege—for I believe it would be such—to be connected with us. And I believe if the Convention takes this course and excludes these men, thrusts them out of the pale of the new State, leaves them with the rebellious country—I would prefer the Convention would adjourn and give them time, ample time, so that they may be heard in this body. For I fear if we take action on this and the legislature and Congress act on it, the die will be cast, and they will be left in a country uncongenial with their feelings and not with their interests.

With these remarks I again say that I am bound to vote against the amendment of the gentleman from Preston.

MR. POWELL. I move we adjourn.

MR. POMEROY. I think we can vote.

MR. POWELL. If they are ready to vote, I will withdraw the motion.

MR. POMEROY. Let us take the vote.

Several members. Take the vote.

MR. WILLEY. Before that is taken I would ask the Chair: suppose that amendment is lost would it then be competent to amend the original amendment by—

THE PRESIDENT. Yes, sir, the Chair so understands it.

MR. STUART of Doddridge. I call for the yeas and nays.

The yeas and nays were ordered and taken and resulted:

YEAS—Messrs. Brooks, Dering, Dille, Hansley, Irvine, Parsons, Powell, Paxton, Trainer, Willey—10.

NAYS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brumfield, Battelle, Chapman, Caldwell, Carskadon, Cassady, Dolly, E. B. Hall, Harrison, Hubbs, Hervey, Hagar, Lamb, Lauck, Montague, Mahon, O'Brien, Parker, Pomeroy, Ruffner, Sinsel, Simmons, Stevenson of Wood, B. F. Stewart, Sheets, Soper, C. J. Stuart, Taylor, Van Winkle, Walker, Warder, Wilson —35.

So the amendment to the amendment was rejected.

THE PRESIDENT. The question recurs upon the amendment of the gentleman from Harrison, to strike out the county of McDowell.

MR. VAN WINKLE. Well, sir, let us have the question.

Several members. "Question!"

The question was taken and the amendment rejected.

MR. WILLEY. Mr. President, I propose to offer an amendment to this, sir, and the Convention giving an indication to adjourn, I move to do so. I could not dispose of it this evening, but I suppose I will be entitled to the floor when it comes up if we adjourn now. I move the Convention adjourns.

MR. BROWN of Kanawha. I would ask the gentleman to offer the amendment, we might be thinking of it.

MR. WILLEY. I intended to move to retain the other two that were stricken out and put all these counties in the third resolution on the same footing. That will be the purport of it.

The Convention then adjourned.

X. SATURDAY, DECEMBER 7, 1861.

Prayer by Rev. R. V. Dodge, of the Presbyterian church.

Journal read and approved.

THE PRESIDENT. When the Convention adjourned, it had under consideration the first resolution of the Report of the Committee on Boundary. The gentleman from Monongalia is entitled to the floor.

MR. WILLEY. Mr. President, when the Convention was about to adjourn yesterday I gave notice of my intention to offer an amendment to the resolution under consideration; and I now send to the Clerk's desk, sir, the amendment I propose.

The Secretary read as follows:

Strike out all after the word "Resolved" and insert:

"That the district comprising the counties of Pocahontas, Greenbrier, Monroe, Mercer, McDowell, Buchanan and Wise, ought to be included in, and constitute part of, the proposed State of West Virginia, provided a majority of the votes cast within the said district, at elections to be held for the purpose, on the day of , and a majority of said counties are in favor of the adoption of the Constitution to be submitted by this Convention; and if a majority of said votes cast, and of said counties, are so in favor of said Constitution, that the legislature be requested to include the said district as a part of the proposed State of West Virginia."

MR. WILLEY. After the discussion of yesterday, involving the principle at issue, I do not propose this morning to detain the Convention but a moment or two. The resolution which I offer now brings up precisely the same questions which were discussed on yesterday and the day before. If we are to receive the vote yesterday upon the amendment of the gentleman from Preston as an indication of the settled opinion of the members of this body, it would be in vain to discuss my amendment any further. If we were to take the vote on yesterday as an indication of the opinion of the members of this body, that it is proper and right to include arbitrarily the whole of these counties within the proposed new State, my amendment, sir, will amount to nothing. It must receive the same vote as the amendment of the gentleman from Preston. But I do not understand that to be the sense of the Convention; and I hope that they voted against the amendment of the gentleman from Preston and also against the amendment to which that was an amendment, for the purpose of getting them both out of the way, that some proposition like the one which I now have the honor to present, or of a similar character, might take the place of all of them.

I present it, sir, for the reasons assigned in brief by myself on yesterday. I shall not repeat the argument which I then attempted to make further than to say that the Convention of August last was a Convention of the entire State of Virginia. The delegates of that Convention represented the sovereign power of the entire State, by intention of law, at least. We do not. We represent only the thirty-nine or at furthest the forty-one counties that have sent delegates to this body. The whole people of Virginia in convention assembled entered into a compact with the residue of the people of this State. The resolution to which I offer an amendment proposes to act for some portion of our fellow citizens who are not in the State or represented on this floor. The action and power over these counties ceased on the adjournment of the Convention of August last. They entered into a definite, written, specific arrangement with the people of the forty-one counties, and now when these people have retired from our boundaries under this express stipulation and arrangement between them we propose to transgress the limits of our agreed authority and usurp powers which they never conferred on us and which they are not here to dispute. I charge, sir, it is an usurpation of authority and a violation of the compact with the other portion of the people of this State who will be surprised by our action here; and it will be taking advantage of a covenant and agreement entered into between them and us. Therefore, sir, it is that I offer this amendment, earnestly, urgently, sincerely desiring by some fair and lawful and proper process to bring the section of the State described in my amendment within the jurisdiction of the new State.

Now, sir, by the ordinance of August last, those counties had the privilege of voting if they saw proper; and if any of these counties had voted and had voted against coming into the new State, by the express stipulation contained in that ordinance we could not and dare not have included them within the new State. Yet, sir, it is proposed by the resolution now under consideration, that although that may be a fact, that although they have not voted, with the further indication that if they had voted they would have voted not to come into the new State, we propose by an arbitrary resolution upon the part of this body to include them within the new State. Is it right, sir? Are we not transcending our authority? Are we not trampling on the fundamental principle adverted to by two gentlemen here on yesterday who acknowledged it to be the true principle, that the proper foundation of all government is the consent of the governed—at least the consent of a majority of the governed? We have given them no opportunity to be heard. By our agreement and compact heretofore, we have assured them that unless they voted to come in, they should not be brought in. They have not voted to come in; and now, sir, we propose, they not having representation here, even in the formation of the fundamental law which is hereafter to govern them to bring them in arbitrarily by way of a surprise, for it must be a surprise to them. I think it is wrong, sir; it cannot have my consent. Therefore I propose bringing them in and giving them an opportunity to vote upon the Constitution which we shall submit to them and then to ask the legislature, if they vote to come in—to give them at least an opportunity to include them within the limits of the new State.

I shall not enlarge, sir, upon this; I shall not trespass further upon the time of the Convention; but I give notice that if the amendment which I have submitted shall pass, earnestly desiring to get in the whole of that territory—at least all of it except the two counties I shall propose that yet if upon a vote within the district proposed there should be a majority of the counties opposed to us, and a majority of the votes cast against the proposed Constitution, the counties of Pocahontas and Greenbrier or either of them should vote in favor of the Constitution, thus indicating a desire to come in, they should be included. By looking upon the map it will be seen that by bringing in these counties or either of them, it will still make something like a regular border; and I desire to bring in either or both, or all of those counties, or as many of them as we can get; and if this carries I would offer the following resolution:

"RESOLVED, That in any event, if a majority of the votes of either of the counties of Pocahontas or Greenbrier, so to be cast as aforesaid, be in favor of the adoption of said Constitution, said counties, or either of them, so casting a majority of votes, should be included in the proposed State of West Virginia; and the legislature should so include them, or either of them."

MR. BROWN of Preston. Mr. President, I believe, sir, I have not occupied the time of the Convention in addressing myself to any proposition that has been under consideration. Representing, sir, as I have the honor in part to do, a county which gave a larger vote for a division of the State than any county within the limits of the new State, I desire to submit a few remarks upon the amendment offered by the gentleman from Monongalia.

I was opposed, sir, to the amendment offered upon yesterday by my friend and colleague for the reason that it sought to exclude from the limits of the State the counties of Pocahontas, Greenbrier, Monroe, Mercer and McDowell; a part or all of which I believe ought to be included within the limits of the new State, that we might have united a homogeneous people in a compact State with a natural and defensible boundary. I see, sir, that the committee has furnished the Convention with palpable statistical exhibits in connection with the resolution which they have presented; and I desire to call the attention of members of this Convention to the fact that there is a calculation and estimate to be made on this subject.

If, sir, it is proposed in addition to the counties enumerated in the amendment of the gentleman from Monongalia to embrace the other counties named in the resolution of the committee, I desire to call the attention of the Convention to an estimate of the population, and see where this course of proceeding will lead us to, and what will be the result of our action. You will find that there is embraced within the thirty-nine counties a population of 272,759. You will find that there is embraced in the tables presented by the committee of the population of the counties outside of this boundary which are proposed to be admitted conditionally into the new State, a population of 255,182. That whole population, sir, I regard as unsound upon the Union question. And, sir, in addition to that population we may regard as unsound, practically unsound, the population of the counties of Cabell, Wayne, Logan, Boone, Wyoming, Raleigh, Fayette, Nicholas, Webster, Braxton, and Tucker, within the limits of the thirty-nine counties. Upon making an estimate of the population of the counties which I have just enumerated, within the limits of the thirty-nine, which I regard as unsound and practically opposed to the division of the State, they have a population of 47,875. Add that population to 255,182, and you have an unsound population of 303,057 against a sound population of 224,684. Now, sir, is it advisable—is it at all practicable—to carry out the purpose which we have in view by a division of this State, to subject ourselves to this opposition? What, sir, may be the result? This population of 303,057 may accept the conditions proffered by this Convention; they may consent to come into the new State; they may be embodied within the limits of this State; and we may in a very short time be seeking to sever ourselves from the Valley as we are now seeking to sever ourselves from eastern Virginia. I believe, sir, it is said that "the leopard cannot change his spots nor the Ethiopian his skin," and I believe it is equally true that a secessionist cannot change his principles. We may have by deception and hypocrisy, sir, on the part of this secession element proposed to be taken in, we may have the next executive officer of this State, sir, a secessionist. Ah, even the bandit guerilla Jenkins may be made the governor of the new State of West Virginia by this operation, or some other man entertaining similar sentiments.

No one who listened to the eloquent and pathetic remarks of the gentleman from Monongalia on yesterday, could for a moment doubt his loyalty. I am satisfied, sir, too, that he is in favor of a division of the State. But, sir, I do think if this principle is carried out, it will most successfully and inevitably defeat the great purpose we have in view.

But, sir, I do not desire to detain the Convention in the vote to be taken on this question. I am in favor, sir, as I have expressed myself, on former occasions, of short speeches, short sermons, and short prayers; and I believe, sir, that in this I represent the wishes of my constituents.

MR. WILLEY. And short states, too?

MR. BROWN of Preston. And short states too (Laughter).

But, sir, all I had in view was this—that we may unite a homogeneous people in a compact state, with natural and defensible boundaries.

MR. STUART of Doddridge. I must say to my friend from Preston that I am as much in favor of short speeches as any man in this Convention. Mr. President, I do not now speak because I am fond of speaking; but acting in the capacity I do as chairman of this committee, it seems to devolve on me to look after the report of the committee, and I talk only for that reason, not because there are not many here in this body who could throw much more light upon it than myself. I do dislike these set speeches very much; and I hate repetition, as much as any man in this Convention; and that was one reason I objected to the question coming up yesterday in that form it did; because I said the same argument would have to be gone over. I shall confine myself to arguments that have not been used. However, it is impossible to avoid some repetitions.

In one sense of the word I would be in favor of the amendment proposed by my friend from Monongalia. If as I said on yesterday that the people of the counties of McDowell, Monroe, Mercer, Greenbrier and Pocahontas would have an opportunity of expressing their sentiments and saying whether they wanted to come in or remain out, I would favor it. Now, sir, if my friend from Monongalia will volunteer to take the service on himself, take sword in hand, and unless this Convention will go down there and clear out the rebels and disciples of Floyd and Lee who are there, and give this people a free opportunity of expressing their sentiments as the people of my county have had, so that they could come here and say what government they wanted to live under, and what State they wanted to come into—then I will favor his proposition. But until I could have the positive assurance that the citizens of these counties whom I know and believe and have every assurance are loyal and who want to come into the State of West Virginia and whose interests are identified with ours —until I can have the assurance that they can have the opportunity of expressing their opinions, then, sir, I am for taking them in. They stand there now, gentlemen, pleading, "save, save, or I perish!" Cut them off now, form your State, be recognized by the Congress of the United States, and you drive those people from you, and tie them up with the people of eastern Virginia with whose interests they are totally at variance. They will be trammeled, sir, and made "hewers of wood and drawers of water" during the remainder of their governmental life. They will have never an opportunity of attaching themselves to West Virginia, or forming a State and framing a Constitution suited to their situation, unless we now include them in it. I have not a particle of doubt that if these people could have an opportunity of expressing their sentiments and saying whether they wanted to cut loose from eastern Virginia and adopt the Constitution of West Virginia, but what they would do it almost unanimously. But can my friend from Monongalia give us this assurance?

The gentlemen seem to stickle much on the ordinance of the convention of last August. He says the whole people of the State of Virginia entered into a covenant, and now we are seeking to break and violate that covenant. Now, sir, that will do to talk about; it will do to say that the whole people of Virginia last August entered into a covenant; but I must be permitted to say that it was a very small portion of the State of Virginia that did it. I here find represented on this floor this day, a much larger portion of Virginia than was represented in the convention of June and August. Now, sir, I am free to say that if we had entered into a covenant, as he represents, and the whole State of Virginia had been consulted, and that if the counties of Pocahontas, Monroe, Mercer and McDowell had been upon this floor and their voice had been heard, and we had entered into a covenant in which they had a voice, then I would have been the last to violate or break that covenant; but I appeal to every man in this Convention who is acquainted with the acts of the first convention and with the people whom they represented, whether there ever was a covenant entered into with these people. Was their voice ever heard here? And what was the reason it was not heard? Because, sir, they were overrun by the rebel powers.

Why was it we could come here and enter our protest against the action of the eastern portion of this State, and take initiatory steps for a new State, one that is more congenial with our interests? Why was it, I appeal to this Convention? Because the general government was enabled to relieve us from that rebel influence having driven the armies from amongst us, and we were free to act for ourselves. Unfortunately for our neighbors—for these people who voted with large majorities against the ordinance of the Richmond Convention, the Government has not yet succeeded in expelling the rebel armies from their midst. I understand the county of McDowell and other counties gave large votes against the ordinance of secession. Now, sir, we cannot have their voice here; you cannot give us the assurance that we will get their voice at the time that you will indicate in the resolution you now pass. The gentleman has left it blank. I would like to have an indication of the sentiments of this Convention as to when they propose to submit this question. If you will say that you will not propose your Constitution to the Congress of the United States and have your State formed until these people can be consulted, then I will go with you; because I am for leaving it to them if it can be done. But such is not the case. It is not possible for that assurance to be given here. As I said yesterday, I believe it is the intention and disposition of this body to form their Constitution, present it to the people, make their application to the legislature, and go to Congress during the present session. Now I understand that to be a fixed and determined purpose in the mind of this body. I know it is with my people; they desire it. They do not want this Congress to adjourn until we make our application to that body. Well, sirs, that will have to be done, not within the prescribed limits proposed by the ordinance that called us into existence, which my friend desires to observe so strictly; but we will have to form our Constitution here as soon as we can, and it will have to be submitted to the people of West Virginia before the first day of next May, if we expect to apply to be received into this Union during the present session of Congress, for in all probability it will adjourn before the first day of June. Then, sirs, if the people of Pocahontas, Greenbrier, Mercer, Monroe, and McDowell are to have this question submitted to them, it is to be within the period from this time until the first of May. Then, sir, the election will have to be submitted to them in April; and in all probability that will be done before there is the least change in the present military arrangements. I understand, and we were told, yesterday, by the gentleman from Kanawha, that these armies have gone into winter quarters, and that the armies of Floyd and Davis are now quartered in the very territory we seek to take within our boundary, and the people of whom we are inclined to believe are loyal people and want to come with us. Then, sir, the question cannot be submitted to them. It is virtually saying to this people, in carrying out the resolutions of the gentleman from Monongalia that they shall not have an opportunity to express their views and come with us, unless you will volunteer and this Convention will take up arms and go down there and drive out the rebels. Now, sir, before I am willing to disfranchise or say to them that they shall be disintegrated from their friends, destroy all social relations with their neighbors and tied down to eastern Virginia with the doctrines there taught now by Letcher, "Sandy" Stuart & Company—who has not seen those reports? Who does not see that the aristocracy of eastern Virginia are now seeking to disfranchise all these people whom we are proposing to take in —curtailing the elective franchise of our friends and neighbors, men who are identified with our interests, who voted against the ordinance of secession and who now I can see standing and appealing to us, as I before said, "Save, or I perish!" You say to them if they will take a vote and say by a majority of their people that they desire to come with us we will receive them, when you must know that that is an utter impossibility.

Mr. President, as to the legal question, I do not propose to argue it at present. It seems to me there was sufficient said on that yesterday. But I must say again, that this great natural boundary is a boundary that is indicated by the hand of nature— that that boundary is worth more to us, if ever we should get into a conflict, than a standing army of fifty thousand men. This day, Mr. President, if I was defending the borders of West Virginia I would rather have the natural barriers on the top of the Alleghany mountains for a defense than a standing army of fifty thousand men, placed around the borders of Randolph, Fayette and Nicholas —this little worm fence. There is no other natural boundary proposed in the ordinance including the thirty-nine counties, save that of a worm fence. And yet, sir, we will deprive ourselves of these great natural barriers which God has erected, for our defense if we should ever get into a conflict.

Now, we would have thought a year or twenty months ago that it was an impossibility that the State of Virginia would ever be in her present condition. We may take consolation now and flatter ourselves that when this rebellion is past, the like will never arise in future; but we cannot say; we do not know, sir; and it is wise and prudent in statesmen to look to all contingencies. Then if this contingency should possibly ever arise, let us look to our great natural defences; and who could look at it, sir, without being struck with the necessity of adopting it?

MR. LAMB. Mr. President, I regret exceedingly that I have not been able to concur in the propriety of adopting the amendment proposed by the gentleman from Monongalia. When it was first suggested to me, I thought it ought to be adopted; but the subsequent reflection which I have been able to give the subject has made me very strongly and decidedly of the opposite opinion.

The objection to it is, or appears at least to my mind to be, that whatever it may be in shape, whatever it may be in profession it operates as a virtual exclusion of these counties from our boundaries. I think those counties naturally belong to us; they are naturally part of western Virginia. I think that that boundary is essential to us, and that it will therefore be unfortunate, to say the least, if we are compelled by any principle to exclude them. We are necessarily compelled to act upon this matter; we must include or we must exclude those counties. May there not be, gentlemen, as much injustice, as much hardship, upon the people of those counties in excluding them practically—without their having an opportunity to express their sentiments, without their having an opportunity of deciding themselves to which section of the country they would belong—may there not be as much injustice on this side of the question as on the other—as much injustice perpetrated on them? We must proceed to the speedy organization of the new State or we must give up all hopes of organizing it. In the organization, before the new State is organized and in operation, this question of including or excluding these counties must be decided. I do not believe that a full expression of the sentiments of that people can be had within the time in which it would be necessary to have it, in order to arrive at a decision of this matter. If it could be had, if I thought it were practicable to obtain their free and independent sentiments on this subject, I would be willing to wait until it could be done; but within the time in which this matter has to be decided, it cannot be done.

Is there any principle then that renders it imperative on this Convention to exclude instead of including these counties? Is it a necessary republican principle that when the people of a large district determine that their welfare, their safety, requires a certain measure, that measure is to be arrested because the people of some little district within that territory may not be willing to assent to it. Put the question fairly, are we to abandon the scheme of instituting the new State because the people of Calhoun county say they are unwilling to come in? You have invited them to express their sentiments on this subject; they have spurned your invitation. You have invited the people of Nicholas and Fayette, on the border, too, to express on this subject, and they too have spurned your invitation. And yet you include them.

This Constitution when it shall be formed is to be submitted to the people of the whole new State; and if a majority of the people—every man may vote on that subject within the limits prescribed, if he sees proper—if a majority of the whole people vote and decide, then it is strictly in conformity with the republican principle that it should be the government of the whole notwithstanding the people of a particular section, may exhibit a majority against, or may be unwilling even to express their sentiments upon it.

Further to illustrate this matter, it has been suggested to me that I should offer an amendment—which I am not going to offer—to the amendment of the gentleman from Monongalia: that the counties of Hancock, Brooke, Ohio and Marshall should be included in the new State if the people of those counties vote for it on the third Thursday of April next. Certainly, gentlemen, if this thing of putting the question to the people of each little district is a fundamental republican principle what right have you to include the counties of Hancock, Brooke, Ohio, and Marshall without putting the question separately to them? What right have you to include the people of Calhoun county? What right to include the people of Fayette, of Nicholas and Logan, whom you all intend to include? Randolph county—Webster county has not voted. You have not any expression of their sentiments here.

MR. SIMMONS. Randolph voted.

MR. LAMB. I know Randolph voted; but Webster has not voted, and Logan has not voted and Wyoming has not voted; Fayette and Nicholas have not voted, Calhoun has not voted—all these are to be included absolutely upon the great principle, gentlemen, that when you adopt this Constitution it is to be submitted to the vote of the whole, and every man if he wishes may come to the polls and have his vote recorded on that subject. But there is, I contend, no such principle as that it is necessary to consult the wishes of each particular little district in order to determine a great question of this kind; or if there is such a principle I say you have no right to include Calhoun and Webster and Fayette and Nicholas, and the other counties I have mentioned. Randolph has voted, I know, on this subject. She has given one hundred and seventy-three votes altogether. Is that even a full expression of Randolph on this subject? The proper foundation of all government, it is very truly said, is the consent of the governed; but, gentlemen, the difficulty lies in the application of that principle. Is it necessary for "the proper foundation of all government" that the consent of the people of every little district included within the whole boundary is to be got in favor of it? Why, adopt any such principle and you render the establishment of any government impracticable.

I have not therefore, been able to see, I must confess, any such principle standing rigidly and unalterably in our way, as would prevent us from establishing a Constitution for West Virginia if a majority of the whole people concur in ratifying it. I think in submitting the Constitution as we are necessarily obliged to do, to the ratification or rejection of the whole people within the district, we are complying fully and perfectly with all republican principle requires of us. We give every man in that district the right, if he sees proper to exercise it, to have his sentiments expressed on the subject. You will find the utmost difficulty if you establish this principle of ratification by sections. How large a section must be heard in regard to the matter? Must you have a majority in each county before you can include that county? To carry the principle fairly out you would have to go back to the great principle of my friend from Wood and consult the wishes of each society, of each family, before we include them. Is it not the true principle, that in a matter of this kind it is necessary to secure the majority of the whole, not the majority of each particular section?

MR. SINSEL. I would like for the Secretary to read the amendment again before I make any remarks.

The Secretary read it as follows:
Strike out all after the word "Resolved," and insert—

"That the district comprising the counties of Pocahantas, Greenbrier, Monroe, Mercer, McDowell, Buchanan and Wise, ought to be included in, and constitute part of, the proposed State of West Virginia, provided a majority of the votes cast within the said district, at elections to be held for the purpose, on the day of , and a majority of said counties are in favor of the adoption of the Constitution to be submitted by this Convention; and if a majority of said votes cast, and of said counties, are so in favor of said Constitution, that the Legislature be requested to include the said district as a part of the proposed State of West Virginia."

MR. SINSEL. To adopt that amendment would be virtually and forever to exclude those counties from becoming a part of the new State. It would put them on an equal footing with the counties in the next section, the counties of Craig, Giles, Bland, Tazewell, Russell, Lee, and Scott; and they are proposed to be brought into this State conditionally. Well, now, it does seem to me that every one acquainted with the locality and natural outlet of those counties in the second section, would see at once that they never would come in. The Virginia and Tennessee Railroad runs just along their border. Those counties would surely vote to remain in the old State. It is their natural outlet; it is much easier for them to get out there to Richmond than to come out this channel. Place these other counties on the same footing, and as my friend from Doddridge has remarked it would be almost impossible to get a free expression from them. So if we vote to adopt the amendment of the gentleman from Monongalia we might just as well vote at once that they never should come into this State. It is equivalent to that. It will amount to nothing else; and it seems to me, too, that the gentleman from Monongalia has been very fearful that there was a prevailing sentiment in this Convention that this great nation is to be divided—that it is to be two governments. Well, now, it seems to me he has run into a like error on the other side. This states-rights doctrine is the very groundwork of secession. It seems to me to carry out his argument will run it into counties being independent sovereignties, that each little district must be consulted and heard. It seems to me that would be the legitimate conclusion of such an argument.

Well, now, as to this Convention here having no power—violating a great fundamental principle, a compact entered into last August—I cannot look at it in the light the gentleman does. It is true that Convention was presumed to represent the whole people of Virginia but equally true that the legislature now sitting in this city represents the whole people of the State of Virginia; and the people in those counties will be just as much represented through that body as they were in the Convention here last August; and that before we can perfect this plan of organization of this State we have to get the consent of the legislature as well as of Congress. Well, when we get the consent of the legislature, we suggest to them a boundary and suppose they adopt it—are not the people of these counties as much represented as they were last August? I think they surely are. And as to this "compact" being "violated"—about the "three parties," as has been referred to here, the same principle will carry out. We want first here, the consent of the people within the proposed boundary of the new State. It was not absolutely necessary last August to refer the ordinance for a division of the State to the people. The legislature might have done it. The people then would have elected their delegates to frame a constitution for the new State. They would then have submitted it to the people for their ratification. They are the final judge of this matter at last. Well, now, we have obtained the consent of the people within the largest portion of the new State. We now have to get the consent of the legislature. They are representing the wishes of the whole people of Virginia, or at least it is presumed so; that is the legal construction. We get their consent. It is presumed then that we have the consent of the people of the counties of Pocahontas, Greenbrier, Mercer, Monroe and McDowell. We have their consent through their representatives. This then is perfected so far as our legislature is concerned and then submitted to Congress; and Congress could finally reject the whole thing and we remain a part of the Old Dominion.

MR. WILLEY. A very few words, Mr. President, in reply to the arguments of my three friends who have addressed you on the other side. And first with reference to the argument just now submitted by the gentleman from Taylor. He supposes that these counties, if the amendment which I have submitted prevails, will be placed in the same category with Craig and the other counties mentioned by him, lying contiguous to and along the great railroad and thoroughfare to the Southwest; and that all their interests lead that way; and that if we submit to them a vote whether they will come in or not, they will vote not to come in, because their interests and connections are not with us.

MR. SINSEL. Do not misunderstand me, sir, I had reference to the counties of Craig, Giles, Bland, Tazewell, etc, not to Pocahontas, Greenbrier, Mercer, Monroe and McDowell.

MR. WILLEY. The gentleman informs me he had reference to Craig, Giles, and Tazewell and the rest of the counties named in the second resolution lying beyond the mountains. How then would the interests of Pocahontas, Greenbrier, Mercer, Monroe and Mcdowell carry them with those other counties? What is the point of the gentleman's argument?

Again in his argument in regard to the legislature, I admit there is force and plausibility; but let us see. That is not the matter of which I complain, or think there is just ground of complaint. They will be represented by intendment of law, at least by the legislature of the whole of Virginia; but what are we here for? To divide the State? The people have acted on that subject and fixed limits and bounds to the State. The people have acted on that subject so far as they had authority to act under and by virtue of the ordinance. The power is exhausted; the act is done. But what are our powers, and what are the objects which have convened us? It is the formation of a Constitution, of a fundamental law, to be submitted to our constituents for their ratification. We are organizing a new government; we are making a Constitution. That is what we are assembled for.

Now, sir, the people of these counties mentioned, within this district, have no voice, no representative here; and although they may be represented in the legislature and the legislature may present this Constitution which we shall adopt to them for their ratification, and may see proper to include them in the limits of the proposed new State, yet, sir, they have had no voice in the formation of the fundamental law; and the great grievance of which I complain is, that you not only include them without representation on this floor, but you force upon them a Constitution on which they had no voice to express in the formation of it.

Now, sir, the argument of my friend from Doddridge and the ingenious presentation of it by my friend from Ohio—they both admit that the true foundation of all government is the consent of the governed; but they ask, must every little district consent? Must we refer it back to every individual in the State? I say, no. I do, sir, say, that every man in the State, every individual who helps compose the political State, every voter in the State, ought to be represented, and be heard in the formation of the fundamental law; and whenever you impose upon him a Constitution in which he had no voice, or no right to have a voice, you violate the very fixed fundamental principle of republican government. There, sir, is an argument gentlemen will have to tax their ingenuity a long time to answer. But then I do not carry the principle so far as that you must get the consent of every section or every individual in the community. You must allow him to have a voice in it, sir. The county of Calhoun spurns our invitation, it is said. Well that is her own fault, sir. The county of Nicholas spurns our invitation. That is her own fault, sir; she might have her representatives here; and if she sees proper to stay at home and allow us after she had a fair opportunity to express her voice in this Convention in the formation law, to fix it for her, she has no right to complain.

But how about these other counties? They stand in the same category with Calhoun and Nicholas and others in the thirty-nine? No, sir, look again at the ordinance: these counties are absolutely to be included in the new State if a majority of the whole vote to include them; but are those the conditions laid out to these other counties that we wish now to include arbitrarily? By no means, sir. They are to come in—this is the language of the ordinance we presented to them:"if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed State, and shall elect delegates to the said Convention, at elections to be held at the time and in the manner herein provided for." They have not done that. Why did not they do it? It is said they had not the power to do it. The greater the necessity, therefore, and the stronger the reason, for giving them the power to do it. If it was so, as I suppose it was so—if they were so oppressed by military coercion and terrorism as not to be able to express their will—every dictate of reason and political justice demands that we should not drag them in until they have an opportunity to express their voice. But then, sir, they have not done it. They could only get into the State by expressing their voice, by casting their votes in favor of doing so. The fair intendment of law is, that not having done so they do not desire to come into the new State. So that you see, Mr. President, they stand in a very different relation to our action here and this proposed new State from any beligerant, secession, insurgent counties within our own limits. These counties perfectly understood if a majority was against them, they were to be included in the new State; but the bargain with these other counties, the provision of the ordinance, was that if they voted to come in, they might come in, but if they did not they were not to come in. They did not so vote, and therefore we have no right to bring them in. Why? If we do so, it is a usurpation of their rights and a violation not only of the letter but the spirit of this ordinance.

MR. HAGAR. The turning point seems to be this: that these people of these counties are either to be brought in or rejected—one of these two things. I am informed by the delegate from Wayne, notwithstanding Ziegler had a regiment then, that all the elections had to be guarded by his regiment. Suppose he had not been there with his regiment—perhaps Wayne would not have been represented. I do not know how many elections were held in Cabell county. Perhaps my friend (Mr. Parker) who lives just across from Guyandotte knows. However, they held one somewhere and the county is represented. Boone, which has eight places of holding elections, by a detachment being sent from Kanawha and a home-guard on Mud River held an election at two precincts, one at Peytona and the other at Mud. They gave 223 votes in favor of the new State. The returns are not here; the man I sent may have been captured. Logan could not be represented. That is my opinion. If it required a military force in the county where Zeigler's regiment were stationed to hold an election; if Cabell county which borders the Ohio river, had to have a military force to hold an election there; if Boone which lies adjoining Kanawha had to have a military force to hold an election at two points—if a detachment went up and held an election there, and by risking their lives and losing one killed and two or three captured got into a corner in Raleigh and held an election there—with what difficulty are those counties here represented! No wonder Wyoming and Fayette had to be represented by petition.

Now, if these counties about which so many apologies are made had not had a military force there sufficient to hold an election, the Union men would have been mobbed out. It was an impossibility, and from that very fact it seems to me it would be unfair to exclude them from our new State. They have cause for not being represented here. With the same propriety you have a right to exclude those other counties. That is my opinion. If we dare not transcend the bounds embraced in the thirty-nine counties, why talk about it? If we can, why not embrace those other counties? If we have anything to do with fixing the bounds let us fix it to the best advantage of the people of our State and the good people in general. It seems to me that McDowell and those other counties should be brought into our new State. The probability is that a majority of them are against it. I know they were in Logan, in Cabell and perhaps in Boone; but yet we held an election and the county is represented. And it seems to me if the turning point really is that if we do not receive them in, and we get our new State organized without them, and they cannot come in in the future, it would be doing them as much wrong to exclude them forever as to take them in and risk their willingness.

MR. BATTELLE. I only want to say a word or two in reference to this question which has been so widely discussed here. I am decidedly in favor of short speeches at this time on this question. I wish to say that I cannot vote for the unconditional admission of these counties; for I have never felt that there was a competency on the part of this Convention to deal with this question of boundary. It seems to me there is a want of power on our part. That question has been so elaborately argued that I need not more than allude to it now. These counties were invited to take action on that question. There has been no action whatever, so far as we are informed here. There has been no message from that people on this subject. The nearest approximation we have is the statement by the gentleman from Kanawha that some of our prisoners who have been taken and have found their way out through those counties to the Union lines say there is a Union sentiment among these people thereby creating the impression in my mind at least that if there was any very great desire or feeling on the part of the Union folks living there to be represented in this Convention, some way would have been found at least to send some message or word if not a delegate, to represent their wishes here. So far as I know, nothing of this kind has been done. I therefore feel that it would be not only transcending our own power and delegated authority to arbitrarily and unconditionally include these counties; but that it would in fact be doing injustice to them.

I felt yesterday somewhat inclined to vote for a proposition similar to, almost identical with, that submitted by the gentleman from Monongalia. I am, however, disposed this morning to believe the safest plan for myself at least, and the proper course for this Convention to pursue is to decline any conditions or any exercise of powers in reference to the district of counties named in the first section or in the amendment. There is no probability that they will be enabled to vote in any reasonable time, that they will be able to vote in time for us to receive their expression of wishes; and as I have already said the reception of them unconditionally would be not only a violation of our own powers, but it seems to me an act of injustice to them. I have no right to assume because they have said nothing that they would if they had a chance to speak or were situated differently from what they are, speak against a political connection with us. It seems to me a very different matter, too, allow me to say, in reply to the remark of my excellent friend and colleague who addressed you on the other side of this question, a very different thing in assuming that the county, say Calhoun for instance, is to be included *nolens volens* within this State, and assuming that the county of Greenbrier is to be included on like terms. It seems to me a very different question in assuming that the county of Marshall, Ohio or Hancock is necessarily and unconditionally to be included in the boundary of this State and in assuming that the outside county lying clear beyond the boundaries heretofore proposed the people of which have expressed no voice on this whole question, nor indeed on any branch of it, since its agitation commenced, is also to be included.

But it is not only, it seems to me, unjust to them to include them arbitrarily, but it is unjust to the State of Virginia, who is and must be a party to this transaction, and in reference to whom, as has been forcibly remarked by gentlemen on this floor, the Congress of the United States will be compelled to assert their rights in this case, whatever may be our wishes or our action.

MR. LAMB. Will the gentleman excuse me for one moment?

MR. BATTELLE. Certainly.

MR. LAMB. Whatever we resolve here, whether we resolve that these counties or any other counties cannot be included, it all goes for nothing unless the consent of the legislature is had to the measure.

MR. BATTELLE. Certainly; I am well aware of that fact.

MR. LAMB. The Congress of the United States must be satisfied that the consent of the Legislature of the State of Virginia is had, before they can consent.

MR. BATTELLE. Another objection which I have and which is conclusive with me sir, the vote I expect to cast is the inevitable and unavoidable delay that it seems to me would be encountered in the creation of the new State. It is known to some, sir, on this floor, that I was most heartily, decidedly, and all the time opposed to the project at the time instituted and under the circumstances instituted for a new State now, while I claim to have been for the last twenty years most heartily desirous and wishing and hoping for a new State in western Virginia. My objection was simply one of time, growing out of what I thought I saw would be precisely the state of things which exists now. But the people of western Virginia having as I understand it decided that question that a new State shall be now created, so far as their will can be consulted, I hold myself pledged in good faith to advocate and adopt the most speedy and direct way to carry out their expressed will.

We propose then to admit these counties on their favorable action. When can that action be had?

MR. WILLEY. When the Constitution is to be submitted.

MR. BATTELLE. Certainly not before the snows shall have been melted from our hills, for very many months to come, then will no reliable vote be taken in any one of those counties. Do we not therefore by the proposed amendment, if it shall be adopted, necessarily delay if not defeat the whole scheme as it is now presented? It seems to me we do. And it seems to me, Mr. President, feeling as I do very great deference to the views of those much more experienced and wiser than myself, that on the whole the safe plan—much as we might under other circumstances desire the admission of these counties—for I confess that in the beginning the great objection with me to the proposed boundary as adopted by the ordinance of the convention of last August, was that they did not include them—but since they did not, it seems to me the safe plan—and the more I think of it the more I am convinced of its truth—that the only plan in view of carrying out our project, is to stick to the record, to adhere to the boundaries prescribed in the ordinance voted on and adopted by the people; to go up to Congress with a clean record in this business, not with a roving commission to go all around over creation, seizing loose spots here and there, but to keep our record on this question simply clean, bright, and pure.

These are some of my reasons, sir, which shall influence me in voting to vote not only against the amendment of the gentleman from Monongalia but against the whole proposition.

The Convention then took a recess.

THREE-AND-A-HALF O'CLOCK, P. M.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Monongalia to the first section of the Report of the Committee on Boundary.

MR. SOPER. Mr. President, I have listened, sir, with much interest to the discussion of this boundary question. I confess at its commencement I felt somewhat embarrassed as to the effect of going against the authority of the convention of last summer in relation to this matter; but after giving it the best reflection I can, I have come to the conclusion that there is nothing in the doings of that convention which is of binding authority upon us. What the ordinance contains is merely advisory and as such is entitled to great respect.

In arriving at this conclusion, sir, it becomes necessary to look at the original act of the convention, to see with what power it was clothed, by what authority it came into existence, and what object it had in view. Now, sir, that convention was in part composed of individuals who were members by virtue of their office, having been elected months before ever any necessity for a convention arose, members of the legislature elected when this question of a new State or the boundary of it had never entered into the minds of the people. The gentlemen who were sent as delegates directly from the people were sent here, I think, for an entirely different purpose. It was for the purpose of reconstructing and restoring the government of Virginia to its position in the Union; and in that point of view, sir, it was a most noble body and it performed a most noble act, an act, gentlemen, that will fill the pages of the history of this country with a proud and glorious record. But, sir, it went further. It showed the strength of our republican form of government here; it showed the power of the people when they have been betrayed by their servants who had violated not only the Constitution of their country but who had undertaken to act in direct opposition to their will, to rise up in their strength and repudiate the acts of their ungrateful servants who have disregarded their wishes and taken upon themselves to violate the most sacred rules and laws we have in the country. Now, sir, that convention came here for that purpose, and they did their duty nobly; and they have established a precedent which will be handed down through all the ages of history, showing the power of the people, showing what they can do, whenever they are betrayed, in sustaining democratic and republican principles and government.

Now we come, sir, to this question of a new State, which I apprehend is entirely a different one; and if I understand the argument in support of its binding influence on us, it is this, that that convention represented the whole people of Virginia. Well, sir, in performance of the good work for which they were called here, they did represent the people of Virginia; but as my friend from Doddridge very well remarked, that convention itself was composed of a much less number of delegates directly from the people than this Convention is composed; and yet, sir, for the purpose of carrying into effect the objects of this peculiar crisis, the extraordinary exigencies of the times required that they should take that position and carry it out; and in doing so, sir, they have been sustained by all the authorities in the land.

Now, sir, what did that convention intend to do on the subject of this new State? Did they themselves suppose that even if they represented the people of Virginia they were clothed with authority to take and divide this State; to take and create a new State and make a Constitution for it? Why, sir, if they had the unlimited authority why did they not do it? Why did they hesitate? If they had done it in any particular respect yet in binding effect, why not do it in all? But that convention I apprehend understood perfectly well they were not here with powers from the people to do any binding act in relation to this new State. Why, sir, when I come to look at the preamble to the ordinance, as it is called—I find that they go on by stating that "it is represented to be the desire of the people" of the following counties to have a new State formed. "Represented," how? By petition, by public meetings held through the counties and resolutions passed, by individuals sent on from those counties to indicate that the Convention was called for the purpose of organizing preliminary measures for the establishment of a new State. Nothing of that kind, sir. Well, how then did it originate? Why, sir, it originated from this discontented feeling which has existed throughout this country for the last thirty or forty years. Yes, sir, I say forty years. I well recollect, when passing through my own county, that I found old men who said it had been the desire of their life, in view of what they considered the unequal and tyrannical oppression on the part of eastern Virginia towards them. It was this rumor, sir, that had floated round in the minds of almost every individual, and probably it was that the present state of affairs was a suitable period to agitate the question. That is the way, sir, it come to arise. It did not come directly from the people.

Now, sir, what did the convention do? Why, as I before remarked, all they did was recommendatory on that subject. They called on a portion of the people to get together if they were desirous of having the new State formed; they were requested to elect delegates clothed with that express purpose; and it is pursuant to that recommendation, sir, that we are here on the present occasion. Now, sir, where is the difficulty? Why, it is said that this Convention goes on and "ordains" that such and such shall be the boundaries of the new State. I again ask, sir, if they had the power to make an ordinance fixing the boundaries, why they did not fix the Constitution? When I look at the authority that they had; when I find the convention was not called especially to do anything respecting a new State; when I find they speak of what was represented to them; when I find that they are wanting to ascertain whether that representation is true or not—I come to the conclusion that notwithstanding those words if taken in a literal construction might show that convention intended to take and tie this Convention up and hampered the people who have wanted a new State and confined them within certain bounds and rules—I have come to the conclusion it was merely recommendatory, nothing binding on the people. Then, sir, I can act consistently with everything that is contained in that and perform the duty which my constituents have vested in me here in the formation of this new State.

Well, I have heard gentlemen say on this floor that it was a matter of compromise; that it was a subject of public notoriety that the convention themselves were not united as to the means and manner and time of effecting the object. I apprehend, sir, that if we could get at the real truth of the matter we would find that it was pressed upon the convention in a moment of hurry and without proper reflection and thereafter sent to the country knowing that it was unnecessary to devote any particular attention to it, because the people would act themselves on that subject and if they approved the project, they would send delegates here freshly instructed from them how to act in relation to the matter. And it is, sir, in that respect and for these reasons, that I come to the conclusion that I am not bound down by anything that is contained in the ordinance of the preceding convention of last summer.

Now, sir, what ought we to do here on this subject? Why, it is agreed—there can be no question about it—any gentleman who will cast his eye over the map of this State and will look at the natural boundaries, the river on one side and the mountains on the other—necessarily we see that all the people in this vast region of country here within these natural boundaries, designate what ought to compose the new State. Now the question arises have we power to embrace these boundaries? And here comes the difficulty. Why, it is said, this county and that county, and this region and another portion are not represented here by delegates, for some cause unknown to us, either hostility or the terrors of an army over them, or neglect, or something or another; they have not seen fit to elect men and send them here. Now, sir, is there anything sound or solid in that argument? I apprehend not. I apprehend if there is a respectable number of the vote and of the counties within the proposed boundary of the State here, the Convention ought to have a right to act. What is the effect of their action, sir? We cannot establish a new State. We cannot even control the boundaries. We can recommend what those boundaries be. We can form the groundwork of our government, and if it is republican in its form, it is entitled in case we get our new State to its position in the Union. That is all we can do, sir. Our powers here are but limited powers. Where does the controlling power rest? Why, evidently in the legislature of this State. And I here will undertake to say if we go and recommend boundaries, the legislature in the discharge of its duty would have a right to alter those boundaries, take in any one county or leave out another. Most certainly they would have the right. Well then sitting here, acting as we suppose with a view to the establishment of a new State in taking boundaries only which we have reason to believe all the people embraced within it will be ultimately benefited by, ought we not to go on, sir, in the discharge of that duty and embrace every section or county that ought to be embraced whether in the ordinance or not, where necessarily they must be benefited in a way that every citizen of the State is benefited in their business and social condition? I think so.

Another objection is that it is contrary to the principles of democratic government to pass laws without the consent of the governed. Why, sir, as an abstract proposition that is true. It is undoubtedly true. But, sir, there are exceptions to a rule even of that kind. Sometimes it is utterly impossible to obtain it, and nevertheless the public exigencies require immediate action. Well, now that is precisely the case here. Gentlemen have gotten up here—we all know what the peculiar state of the times is. We know in what a most unpleasant position and condition the people of large numbers of these counties are now in. Why, sir, almost every member has given vent to his feelings on this occasion. And it is time, sir, that all true loyal men within the bounds of this new State—and when I say all of them I mean the great majority of them—are ready to devote their moral and physical power and their pecuniary resources, in order to sustain this government. They are ready and willing to do it at all times; and I know there is rising up spontaneously in the heart of every true loyal Union man a feeling of resistance and condemnation against the acts of the secessionists whether in open rebellion or secretly aiding and assisting them, living among us now. But I hope when we perform the great duties resting on us we will divest our minds of everything like those excited feelings. It does not become us, sitting here, forming the fundamental rules not only for the government of ourselves, but probably for the people in all after generations—certainly the spirit of whatever we may perform here will be retained down to the remotest ages, although as we progress on even what we shall do may require revision and alteration—we ought to look beyond the passions and prejudices of the hour and the day.

Some gentlemen have said, "I do not want such a county in my new State, because it is filled up with unprincipled secessionists, men that I do not want to live or associate with." I beg gentlemen to reflect a moment that notwithstanding it may be true now it will be but for a short time; and when I speak of a short time, I mean at most but a few years—but a short time in comparison, sir, with the lasting authority of the Constitution of this new State. They ought to bear in mind that within a short time these individuals will be convinced of their error; and if they are so obstinate and stubborn and perverse that they are not to be convinced, my word for it such things will be brought round them among their neighbors as will drive them out of the places they now inhabit, and that we shall before many years become a united and happy and prosperous people. But, sir, is there a gentleman here, with all the outrages of these secessionists, in sober moments, while regretting the course of conduct they have been guilty of who when he finds them willing to become good and obedient citizens, will not take them into fellowship with him? If there are any gentlemen here with feelings of that kind, I can only say for myself I do not harbor them.

Now, sir, I maintain, in the first place it is our duty to take and fix the natural boundary of this new State, with or without the consent of the counties to be embraced in it. I mean, sir, by that that if I was here representing a single county and all the other counties in the State were against me, I would not be deterred from doing it—I mean that where every necessary means has been taken, the invitation given, the people in a large majority of the counties have acted on the subject, and sent us here with full authority on the subject, it is our duty to act. We are acting not only, sir, for the benefit of those individuals in these outside counties but for the benefit of the whole. My constituents, sir, in Tyler county are perhaps in some degree interested in having these mountains for a boundary; and as such, sir, I am carrying out nothing more than their wishes and interest when I embrace all that region of country. It is true, sir, I should prefer to have them all here represented; I should like to hear from them; but when, sir, any cause even if it should be resentment against us, should make them disregard our invitation, yet, sir, would I take them in, trusting that upon reflection they would see the wisdom of the act and the advantages they would derive from it.

Why, sir, let us come down to something that is probably more familiar. Has it not arisen in the recollection of some of you when an application was made for the formation of a new county out of two or three parts of other counties, when perhaps one portion of the citizens of one county would disregard your application, or if they acted at all, they would act in direct opposition to you, yet when the matter was laid before the legislature no one would deny their authority or power over it. And has not the junction of counties and parts of counties been carried into effect against the wishes of parts and portions of people, nevertheless the great body were benefited. Just so in relation to this new State: we are to take and consult our boundaries and such as will prove beneficial to the whole people it is our duty to have. Why, sir, this doctrine prevails all over our land. Why is it your State has a right to come and take your property for public purposes, exercising powers not given it? Because the public good requires it. Upon the same principle we acting here have a right to take in those remote counties because the good of the greatest number requires it.

I come back again, sir, to the position that this whole power rests with the legislature—that we are acting here in a simply recommendatory manner. While I hope that whatever we shall do will meet the approbation of the legislature, yet the responsibility of it all rests with them. But what do we propose to do, sir? We do not propose to send our proceedings directly to the legislature without first consulting the people. The people embraced within the whole boundary will be consulted on the subject. In doing that have we not done everything that is fair and proper on our part. We certainly cannot be charged here with any desire to inflict on any portion of the people a government that would be oppressive to them or contrary to their wishes, unless their wishes are of an improper character. We cannot be charged with anything of that kind; and it is the only discreet way in which we can perform our duty. Suppose we confine ourselves to the thirty-nine counties and out of this number there are those in which no elections have been held. By the same parity of reasoning you ought to throw them out and on the same principle all those counties that gave a small or limited vote. Why are there counties here with probably less than a hundred votes when there are probably thousands within their bounds? Why is it? Do you call that, sir, a fair expression of the will of the people. Are they the men who are to vote upon our doings here? Why I apprehend not; so that if you introduce this subject of not being willing to act until you have the action of the people first, it ought to be the action of the people clearly expressed in a majority of the counties within the boundaries. But I apprehend there is nothing real or true in it. It is enough that certain people have come out and voted and they have sent us here, and we will perform our work and in the manner in which it ought to be done and then send it to them for inspection and examination, approval or disapproval. If they vote it down, there is an end to it. If the legislature disapproves of it then there is an end to it. But if they approve of it, it will then go on to Congress to be finally adopted or condemned. But we shall have discharged all our duty.

I apprehend, sir, there is nothing to prevent us going on and fixing the boundaries of this State as we in our best judgment shall think it ought to be fixed, and then proceed with the residue of our business. Thus briefly, sir, I have seen fit to explain the reasons which will influence me in my vote that I am about to give on the subject of this boundary.

MR. BROWN of Kanawha. Mr. President, I desire to say a few words relative to this subject before this vote is taken; and that I may speak understandingly I will endeavor to state or understand the subject before entering upon the discussion. I understand this is a proposition to amend the report of the Committee on Boundary which embraces the counties of Pocahontas, Greenbrier, Monroe, Mercer and McDowell within the boundaries of the new State, and that this proposition to amend is to add the counties of Wise and Buchanan to that list and then place them in a conditional state that they may vote themselves in if they choose and if they do not, they form no part of this State.

THE PRESIDENT. I do not think the gentleman apprehends the amendment exactly. Will the Clerk read it.

The Secretary read as follows:

Strike out all after the word "Resolved," and insert—

"That the district comprising the counties of Pocahontas, Greenbrier, Monroe, Mercer, McDowell, Buchanan and Wise, ought to be included in, and constitute part of, the proposed State of West Virginia, provided a majority of the votes cast within the said district, at elections to be held for the purpose, on the day of   , and a majority of said counties are in favor of the adoption of the Constitution to be submitted by this Convention; and if a majority of said votes cast, and of said counties, are so in favor of said Constitution, that the Legislature be requested to include the said district as a part of the proposed State of West Virginia."

MR. BROWN of Kanawha. It is substantially, Mr. President, as I have stated it. I believe I was correct in the principle though not in the language. If this amendment prevails, I understand the whole of these counties are stricken from the boundary of this State and can only become a part of the State by a vote of the people at April next.

MR. WILLEY. There is no time fixed.

MR. BROWN of Kanawha. Very well, some future time.

This proposition comes to me, Mr. President, in a very seductive form, and I confess I am almost inclined to say to my friend from Monongalia that one of the fundamental principles of our religion is "lead us not into temptation." I opposed the motion but I believe he advocated it, to strike out the counties of Wise and Buchanan from this category; but I gave to the Convention the reasons that induced me to oppose that, and I endeavored to show to the Convention that these counties naturally belonged to the region of country of which we are a part, that they were a part of the water-shed from the Alleghany to the Ohio river, and that their fortunes and destinies ought like their waters, to be linked with ours. But the gentlemen with arguments so powerful that they turned the whole course of the Convention have portrayed in very glowing and eloquent language to our satisfaction the fact that these counties ought to be stricken from this list, ought not to be embraced within boundary and limits with the other five with which they were connected, but they should be struck out that we might have no more panhandles at the other end of the State—and I believe the gentleman was particularly facetious on the subject of panhandles; he even felt that it would be doing injustice, to old Virginia, that it would be making a panhandle for her too. Now, sir, if these panhandles are so potent for evil I am at a loss to discover why they are now introduced by the very gentleman who wanted them stricken out before. I confess I prefer to lose the two counties of Wise and Buchanan to losing all of them, though I believe that they too ought to be connected with us.

MR. WILLEY. I am willing to strike them out.

MR. BROWN of Kanawha. I prefer to lose the two counties rather than complicate this question rather than lose the counties of Greenbrier, Mercer, Monroe, Pocahontas and McDowell which are important and essential to our safety and welfare.

MR. WILLEY. With the leave of the Convention I will modify my amendment so as to leave the counties of Wise and Buchanan out.

MR. BROWN of Kanawha. Very well, sir. Then I am only a little less opposed to his motion than I would have been. Just two counties less; and I will endeavor to satisfy the Convention, if I can of the propriety of retaining them.

Now, Mr. President, it seems to me that there are two distinct arguments on which gentlemen have advocated this motion. One is a want of power in this Convention to do it, and the other is that it violates a fundamental principle of every free government —forcing a new order of things, a government and Constitution to which they are not parties upon a people against their consent. Well, sir, I will admit candidly if these grounds of objection really existed they would be a complete answer to the question and ought to command every man's support. But the question is, is either of them valid, because I admit if they are then we should adopt this amendment.

Is there any lack of power in this Convention to do the thing that this resolution proposes? This people is not fixing a boundary upon a people against their consent. It does not propose to do it. This body making a Constitution to force it upon an unwilling people. It does not propose to. This body is a body assembled at the instance of the people to form and frame a Constitution in order to submit it to the votes of the people, that they as freemen may determine for themselves whether they will accept it and live under it or whether they will cast it aside and say to these gentlemen who framed it as unworthy servants, you have failed to accomplish the objects of our wishes, and you can retire to your places and we will send others in your stead. Then this Constitution when framed and the boundary you may here designate can have no force or effect receives no power from this Convention, until the people our constituency, adopt and ratify our action. Well, certainly, sir, we surely cannot so stultify ourselves as to say that we cannot propose that which seems best to our constituency. My people sent me here, not to prescribe a line of policy but to exercise the best judgment I have in doing that which shall be for their interests, and submit it to them. I did not come to act to bind them, but to propose to their consideration something that I think is best for their welfare; and when they shall exercise their discretion and judgment on it, then alone will it be binding and operative.

Now, sir, in this resolution as it comes from the committee they propose to define a boundary to be submitted to the people for their assent, for the people of Greenbrier, Pocahontas, Monroe, Mercer and McDowell, as well as all the limits of this proposed State—

MR. WILLEY. Will the gentleman allow me to interrupt him to ask a question?

MR. BROWN of Kanawha. Certainly.

MR. WILLEY. I desire to have my mind satisfied on the argument which I made, not that which the gentleman may imagine me as having made. The objection I have and which I have repeatedly stated, is not as stated by my friend from Kanawha. I know, sir, that this Constitution is to be presented to those people for their acceptance; but the principle of fundamental right which I think is violated by our action if we include them arbitrarily is this: that in the making and ordaining of that fundamental law every man upon whom it is to operate has a right to be heard, and these people cannot be heard now. That is what I object to as a violation of fundamental right.

MR. BROWN of Kanawha. Mr. President, the ordinance of the convention which called this body together answers the questions. That ordinance gave to that people the same right to come here it did to us. It was perfectly within the eye of that convention that that territory belonged naturally to this region and that those people's interests and fortunes were identified with ours and that a manifest and great injustice would be done to them if there was no helping hand held out to them; and therefore that convention did extend to that people—some of them by name and some of them by description—the very same right to be here with us. But unfortunately that convention had not the power to remove the confederate armies from them to enable them to come. There, sir, is the difficulty. The difficulty is one that the convention had no power to remedy, neither had the people. It is one that we have not the power to remedy save in the mode proposed in this resolution. We have not the power, neither has the Government of the United States furnished the power to remove the hostile forces that hold them down and seal their lips in the silence of death. Why, sir, how do you suppose our people of Kanawha could have come up here with a vote such as they have while Gen. Wise's army of 5000 was located in Charleston? Yet if the election had been then and we could not have voted, you would have said we had no interest in this thing; and yet the situation of these other counties is just what ours was then and if relieved they would be as unanimously with you as the people of Kanawha; and yet you would exclude them from the right to be a part and parcel of the people they naturally belong to and have grown up with for no other reason than their misfortune. Why, sir, in our county only a few days ago it was impossible to vote and the very identical same thing that existed there then exists in the counties of Monroe and Greenbrier and exists there now. It is for them as well as for ourselves that we stand here to speak. And I could not but think to myself, sir, that if the people of Greenbrier could be now seated on some of their snow clad mountain tops and listen to the arguments and speeches in this hall, the arguments and speeches of the gentlemen who are seeking by the support of this amendment to exclude them forever from the boundaries of this State and from the fortunes of this people would be received by the Union men there with weeping and with tears. While, sir, at the same time if the secessionists were on another hill top you would hear their shouts going up for these gentlemen who are advocating their exclusion from the fortunes of a people with whom they are forever identified. I stand here to speak for and defend the cause of the Union men in that country whose fortunes I know from their very latitude and geography are identified with us, whose associations and feelings must inevitably be ours, whose relationships and kindred are all mingled with us, whose waters flow from their hilltops down by us, whose springs we annually visit to spend the summer. Their hearts are with us, and if it were in their power their hands would be with us too. I speak not because I know from information from any particular one of them, but I speak what I know of the feelings of men similarly situated, because we have been ourselves in the same situation. But I am confident, sir, the secession portion of these counties never will be here until the power of the nation is so exerted that they must either leave their homes or submit to the law; that as long as the *ignus fatuus* of a Southern Confederacy still exists they will cling around it as the Aladdin's lamp that is to carry them on to victory and triumph and to glory, even if it should amount to the expulsion of every Union man from the western slope of the Alleghanies.

It seems to me, then, sir, that when we present to you the action of the convention desiring the privilege here for these people to come in and be here by their suffrages and we find that that very provision is defeated by a power these people had no control over, nor we, nor the convention—by a power that is inimical and hostile to the interests and welfare and wishes of those Union people as it is to the interests and wishes of all the Union people in the whole State of Virginia—that when that object is defeated by a force that cannot be overcome for the present, it is a poor plea to say that they are not here because they did not choose to be here—to say that a people whose mouths are closed by bayonets and cannons are inimical to the cause we are here embarked in; because they are utterly helpless and we extend them no helping hand, and if there is anything in republican government, it is to say that no matter what happens their hopes and securities and rights are to be sacrificed by the action of this Convention: for who will pretend if you form this State without them and they are left in the old State that they will ever have permission given them to come however anxious they may be to do so? How, sir, will they ever ask and obtain permission of an eastern legislature deprived already against its consent of a large portion that they desire to hold? They will never allow another inch to go unless it is by the point of the bayonet, and then you are to be involved in another civil war to stand by this people, if they resolve to come in this way as we have done, or you must give them up forever to the miserable condition in which you find them, degraded simply because they are Union men—for wherever I have seen secession predominate, it not only plants the foot of tyranny and oppression on the Union neck, but it blackens the character of the Union cause, and so abuses the Union man as not to permit him to be a citizen in the community. Why, sir, the highest crime in the eye of secession is to sustain the Union. What is it that impels so many thousands of our people to break the associations, to cut loose those cords of unity that have bound this Commonwealth together but to stand by our obligations to the Union and defend our all against that domineering tyranny that now sways the power of the state? Are we prepared then to give up these friends into the hands of their foes, and leave them bound hand and foot without a single effort to sustain or secure or rescue them? It seems to me, sir, that these gentleman resemble very much the great care and caution of the parent who would see his brethern or his children or any member of his family sinking beneath the flood, drowning and yet refuse to hold out a hand to rescue them because the drowning party was unable to call for help. They are determined not to violate a principle by undertaking to assist them, because there was no call for help. Why, sir, I hold that we come here to discharge a high duty, and that at the same time in discharging it we find ourselves in the midst of a revolution, and that it is not a time for us to stick upon trifles or follow the exact letter of any statute, but to rise to the high consideration of discharging a duty amid these perilous times at every hazard, to strike at the substance and not follow the shadow. The question is what was our object? It was to form a new State for the people whose fortunes, interests and associations are all homogeneous with our own. We have taken upon ourselves the name of West Virginia, and I will ask the gentleman when and where it is that the people of Greenbrier and Pocahontas, Monroe, Mercer and McDowell have forfeited the name of West Virginians? How is it, sir, that we have a right to read them out of church? Are they not as pure of blood as we? Have they not as good a right to wear the name as we? And why shall we undertake to appropriate to ourselves that name which recurs to as untarnished and leave them to a name that will go down to history in disgrace when we have severed from them? No, sir, they are part of West Virginia; they are on the western slope of the Alleghany mountains, and everything induces me to stand by them from first to last. As my friend from Marion said, if there was but one solitary Union man in those counties, he is entitled to our protection and aid, and we ought to include them and save him. But, gentlemen, you need have no fears that there is but one. Only remove the rebel forces from those counties—place your Union army at Lewisburg, or Princeton or Monroe Courthouse, where some Union men of the county of Boone are now incarcerated as prisoners because they had the independence and firmness to stand up and maintain their rights under the Union and Constitution of their fathers. Sir, we should extend the limits of this State beyond that prison if for no other purpose than to save these men thus incarcerated.

I see, then, sir, no objection on the score of power, because we ask the consent of the legislature and the ratification of the people; and everything induces me to stand by and sustain my friends in the hour of peril, when desertion now is ruin forever to them.

But then much has been said that we are here a represntive body, representing the people of the counties from which we come; and gentlemen have appealed to the votes; and no, sir, I would ask any candid man who advocates the principles of representative government and who believes that a free government that does not rest on the voice of the people is no free government—what would he think of the representative of a county standing here with only 32 votes? Thirty-two votes secures a representation in this Convention to frame a Constitution that is to bind forever the people of Raleigh. Sixty-five votes sent a delegate from the county of Tucker. Thirty-two votes sent a delegate from the county of Braxton, a county that I understand from gentlemen living in it, gave some 500 majority for the ordinance of secession. Why, sir, do you pretend that those votes alone are the only persons represented in this body? If I thought so I would go home in shame. I understand, sir, that these gentlemen are representing the Union men of those counties; and although there were but 32 votes there were hundreds of others that did not have the opportunity, and that in every one of these counties in which these small votes were cast you sent armed men to the polls and kept them there. In my view the Union men of those counties have representatives here, who are representing the men that did not vote as well as those that did. And I claim we are here in the same way the representatives of Union men of the Greenbrier and those other counties, who have a common feeling and sentiment and interest with us. Let not this Convention therefore stickle on the simple question that because these counties have no delegate here, when we have shown it was utterly impossible in the very nature of things for them to come here, and make that the ground of excluding them, when the gentlemen who advocate the amendment, and all the gentlemen I believe who oppose this inclusion, admit that the territory naturally belong to us, that the people are bone of our bone and flesh of our flesh. Every high consideration of State policy induces their inclusion. A great natural barrier is reared as the boundary of your territory, that is a security not only to the counties which lie next contiguous upon which continual raids must occur and whose homes and firesides will be continually desolated unless you keep these counties in and furnish a barrier further back, and to defend which borders you must take your people and soldiers from the most distant county in the State and plant them on the whole Alleghany range from one end of the State to the other in order to keep back this foe; but let your foes come down into this State once and get a footing among our people and you will find yourselves trammeled if indeed you ever succeed at all in keeping them back. Why, sir, have not our generals now been spending the summer all along this range of country only a little beyond midway to the back part of the State, within the thirty-nine counties, keeping back these armies?

It is not the people of this country that are opposing us. It is the hostile forces of the Southern Confederacy that are coming down like the Highland clans on our border. I say then these armies already have found themselves incompetent; but if you only had them back on the Alleghanies and rear a few fortifications, as has been done at Cheat Mountain, where a garrison here and another there would enable you at a small expense and with comparative security to render yourselves safe against the encroachment of either small or large forces. Then we should feel some security in these borders and you might extend your government over the people. But until then you will have no peace or law or order; for how is it possible to have it when your military cannot catch these parties and your civil officers are captured and marched off to prison.

It is a matter, therefore, not only of high State consideration but of absolute necessity that this should be done for the peace, security and happiness not only of these counties, but your own people throughout the State. When all these reasons concur in demanding it, why hesitate? I cannot do so.

MR. PARKER. There is one feature, Mr. President, in the amendment which is offered by the gentleman from Monongalia of which I entirely approve—the recommendatory form to the general assembly, in which it proposes to submit these matters to that body which represents legally and constitutionally all parties that are constitutionally interested in the territory to be divided. It seems to me it is entirely competent for that body to change or alter the boundary. So far therefore as that feature of the amendment goes I am in favor of it. But there is a condition annexed to that recommendation. That condition is that within a certain time I think the 19th of April, a majority of these several counties shall vote to come into the new State. If they do not so vote then of course the condition which is attached to this recommendation is not complied with; and of course the condition which this Convention annexes to this recommendation to the general assembly is complied with, we can have no hope or expectation that the general assembly will act on it. We have prescribed just such conditions as we see fit to our recommendation, to what we ask the general assembly to do, and of course the general assembly will never think of acting until those conditions which we have so carefully annexed have been complied with. Neither can this Convention go and ask, with any propriety, certainly, that body to disregard this condition annexed. Therefore unless these conditions which are annexed to this amendment are complied with, it seems to me the door is forever closed for these counties to come in and become a part of our new State. It seems to me we have practically excluded them forever.

Now, it looks to me that there is a commercial and military necessity that the territory of this new State should reach the ridge pole of the Alleghanies, some way or other—either there or the ridge pole of the Blue Ridge. There is no middle ground. Any where else is boys' play. Go down into the valley and have one county here without any natural division anywhere, and another county there, as a gentleman remarked here, like an old fashioned Virginia worm fence, and what kind of a line do you have? I say one or the other of these ridge-poles where the waters divide either upon the Alleghanies where it divides the waters flowing into the Ohio from those flowing into the valley or on the Blue Ridge where it separates the waters of the valley from those flowing into the—one or the other we must have. Now, here is the necessity; we all see it and feel it; and if the gentleman from Kanawha and other gentlemen are correct, and I have no doubt they are, the Union men are with us. They feel these commercial and military and all the other necessities that pertain to them. They are with us. Shall we to gratify passion and prejudice against a few miserable secessionists there abandon all these great benefits—abandon this great barrier which our State calls for? Abandon our Union friends? What for? To gratify a few miserable secessionists that are there now?

I say the legislature on our recommendation has the constitutional power to put down the stake there. We will take care of the Union men that are there. We will take care of the secesh that are there, too. That is my doctrine.

Now, I cannot consent to stake so important a feature—as I look upon these counties as absolutely essential, whether they consent to come in or not—I cannot consent to stake that upon so great an uncertainty as whether that condition can ever be complied with or not. All the gentlemen concur here in the opinion that it cannot be complied with, even by the 19th of April; that it is impossible. Well we must begin to work up to some fixed boundary; and unless we define and begin to act on some definite or fixed thing we cannot describe the territory in making our application to the legislature and Congress. Now, I say, go to the Alleghany. Ask the legislature which is now in session and anything reasonable she will do for us; and she will take care of the interests, the great interests of the other portion of Virginia which she represents. She will take care that there are no more panhandles made. That is her business. She is competent to do it. We need not call another convention to do it. But that this Convention is subject, and that the constituency of this Convention is subject, to that which originated the convention last summer, there can be no doubt.

But one suggestion I wish to make here. It is argued that we have more constituents, to count heads, than got up the other convention, the superior body; therefore as we can count more heads than they could, we are *the* Convention and they are subject to us. Well, now, there is this consideration: our constituency may be larger, but it has limited powers under the ordinance of that convention. That convention clothed us with what powers we have the honor to exercise here. They told us to exercise just the powers written down in the ordinance, and no more. That is very clear. The ordinance declares:

"The people of Virginia, by their delegates assembled in Convention at Wheeling, do ordain that a New State, to be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary"—that is the territory that they mark out and which is for us to go on and act on.

Then it provides how the delegates shall be chosen:

"And it shall be the duty of the Commissioners conducting the election at the said several places of voting at the same time to cause polls to be taken for the election of Delegates to a Convention to form a Constitution for the government of the proposed State"—that is the State covering the territory prescribed, without these conditional counties. But that does not touch the question it seems to me. What we do is advisory to the legislature. We need not be at the trouble of calling another convention representing the whole people of Virginia. Our legislature represents her. Let us go straight at it and select out what we want them to do—what additions we want her to make to our territory—and just go to the legislature and ask them to make it, and I have no doubt they will if it is reasonable, and there is the end of it.

Well now, let us take these five counties. That carries us up to right here. Then if there is any other as there may be, necessary to carry us up to this great natural division, let us take it too; and when we have selected out what we want to be added, the whole matter will be placed in a proper form recommendatory to the legislature asking them to change the bounds to the spots where we want it.

For these reasons I shall feel it my duty to vote against the amendment.

MR. VAN WINKLE. Mr. President, I was disposed to heed the admonition of the chairman of the committee and the gentleman from Preston to make short speeches at this time, and reserve what remarks I intended to make on this matter until the question came up on the final passage of the resolution; but from the range the debate has taken, covering as it has every possible ground that can be involved in the discussion of the resolution itself, it would be affectation to hesitate any longer about taking my part as it is; and I trust, sir, from the ventilation the subject has already received, when we come to voting, we will vote right through, and not have any debate on the resolution after we have settled this amendment.

In reference, sir, to the power that is claimed for this Convention, or the want of power that is alleged, I have a few words to say, and only a few. There is one suggestion I would like to make to the members of this body, or rather one question I would like to ask, without claiming to be able to answer it, certainly to my own satisfaction. The question, sir, I would like to comprehend is, what right had the Convention which assembled here in August and passed the ordinance under which we are assembled to circumscribe our action here? Now, sir, it is a question well worthy of consideration, which every man may ask himself and settle as it shall seem best according to his own persuasions on the subject. Had they the right to circumscribe our action so far as to anticipate us in the very performance for which we had assembled? This certainly will be answered in the negative. Had they the right to lay down terms and conditions on which we should conduct this matter, and do many other things which might have circumscribed our proceedings here? Certainly those questions will be at once answered in the negative. Then, sir, are we to infer that in reference to a matter as important as this—one upon which the prosperity of the new State may depend—are we to infer that that convention was disposed to circumscribe us in our action? Are we to infer that that convention was disposed to prevent us doing that which was best in reference to the subject committed to us—that they would so have limited our power here that it was "Hobson's choice," with us, take that or none, even though circumstances had abundantly manifested by this time that their boundaries had become unavailing or improper from circumstances beyond their control or ours? This, sir, would be to assume very much, indeed—very much to say that that convention had any intention to tie us up in that way.

Well, sir, it appears to me then all we can say about that convention is, that so far as they do attempt to prescribe anything for us it is to be considered directory or recommendatory. Now, sir, we all know in the interpretation of the laws that while many things are put into the law, they are held by good judges to be simply directory; not that every provision of law is an edict; not that everything must be complied with strictly and according to the letter. Why, the term is familiar with lawyers that they are "simply directory;" and the idea is that while they assume to bind the direction as it were in which we should go they do not assume positively to control it. It appears to me, sir, there is something in these considerations, for arriving at a due understanding of our powers here.

Now, sir, the argument has been made here, and I am but repeating the arguments of other gentlemen—and I am afraid I can but repeat the arguments of other gentlemen, the subject has been so thoroughly discussed—but the August convention assumed to fix boundaries, and assumed to lay it down that if a majority of the people within those boundaries, without requiring as we do in these subsequent resolutions that which shall constitute a majority of the counties also, but if a majority of the people of the whole of the new State voted in favor of it, that all the counties comprised in these counties should comprise part of it. Let us look, however, at the principle involved in this. Say there is any county so situated as to absolutely be important to give the State regular or contiguous connection of territory, however unwilling that county may be, and it might be the county of Calhoun, to come into this new State, yet as to omit it would be sacrificing the interests of the whole proposed new State, it must come in *willy nilly*. And, sir, is not that just? I ask if that is not just? The question they propose is not, is the majority of this county or that county or the other county in favor of coming in, but is a majority of the people of this whole district, composed of thirty-nine counties, in favor of coming in? Why, sir, on the mere rule that majorities must govern, their action is correct. They had a right to say to these counties, if the majority of the people in those boundaries prefer to erect a new State here, you are included as a minority by the action of the majority. And what, sir, do we propose? Not one thing beyond that. A slight inspection of the map shows that these counties are so situated that they are naturally connected with the proposed new State district embracing the thirty-nine counties; and we know that there are business relations now between these counties; and there are owners of property in the one residing in the other who resort to them for various purposes; and many other things which need not be recited here because every gentleman was familiar with them before he heard them here, which show that there is that kind of natural connection between them and us as to render a political connection indispensable. And behind them between them and eastern Virginia is this tremendous range of mountains which disconnects them from that and shuts them up with us.

Now, sir, here are very tangible, and I may say legal and constitutional reasons why these counties should form also a part of the new State: But when we attempt to venture in that direction, we are met by this strict letter of the ordinance which was never intended to control us in that respect. It has directory power, it has recommendatory power, if you please to call it so. And, sir, we are to be prevented—for this is the true idea and I believe is warranted by the facts and circumstances—we are by this technicality—for it is nothing more, sir, to be prevented from doing not only justice, for such I conceive it to be, to the counties named in this resolution, but, sir, giving them an opportunity which no one hardly can believe they will not agree to embrace whenever, if I may so phrase it, they come to their senses. Whenever this unhappy state of things is removed and they are able to sit down and see clearly and calculate calmly, no man can doubt I think that the large majority of these counties would vote for coming with us. We hope, sir, by the time to be fixed for taking their vote that circumstances will have so changed that they may express their sentiments in that way. The convention in August here, sir, thought that by October that relief could have been afforded them; and we can but perpetuate that hope acting perhaps on the very same convictions on which that convention acted, believing that these people would be agreed to unite themselves with us if the proper opportunity was afforded them to say so. We are for extending the time; for giving them another opportunity in order that we may cordially receive them to our embraces at the proper time.

But, sir, there is another argument upon which I wish to say a few words. We are told that these counties are filled with secessionists. I have very great doubts, sir, whether any county this side of the Alleghany, perhaps the Blue Ridge, is filled with secessionists—that is to say that there are none there but secessionists. I believe when this pressure is removed, when men dare come out and say what they are, we shall find not only that there are many Union men there, but who have been suffering on account of being Union men. But what do those who use this argument propose? Follow it out, sir, to its legitimate consequences and it is nothing less than this: that all the secessionists living within the boundaries of the new State are to be exterminated. That, sir, is in plain language the proposition. Because unless extermination is applied, unless they are either put to death or driven out of the country there will be secessionists there till the end of the chapter, unless, I may add, they repent of their misdeeds and return to the former good old way.

Now, sir, to me, Union man as I am—and not only Union man but so constituted that it is utterly impossible I could be anything else—it is a horrible idea that extermination either by exile or by death is to be applied to our former fellow citizens. I have, sir, no morbid sensibilities on the subject; but I do confess I have a feeling of regard and of something of kindness left even towards these our erring fellow-citizens; because they have been my fellow-citizens; and because for many of them I know that they have been misled, misinformed, misdirected, and a bad example set them by those to whom they had been in the habit of looking for examples. Sir, it is a tremendous question that is now presenting itself, and may yet agitate the heart of this nation, and that is about the course that is to be pursued towards these men. I am happy to say that I believe the national government will take a more tender view than some of us are disposed to. I have seen only yesterday a circular from the Treasury Department directing that property taken when proved to belong to loyal men shall be taken care of and strict accounts kept by the agents employed so that reparation may be made or property returned to those who may accept the protection of the Government within a reasonable time and resume their allegiance to the Union. Are we not, sir, to be as careful as this? And what are we to do? Are we at once, as some have indicated even here, to throw these men overboard and deprive them of all the rights of citizenship without an opportunity to repent? Aye, sir, do we not place them on the condition of Esau of old who found no place for repentence? Certainly, sir, such conduct would be unworthy of a Christian people. We have been wronged, sir, injured, our friends murdered, our property and prosperity destroyed; all these aggravations have been heaped upon us; and yet, sir, there may be a time when mercy may properly be exercised—not to those who are in arms against us; no, sir, for them the strong arm of the law be put forth, or where the law is unable let the strong arm of the military put them down. While they are continuing their evil deeds let punishment be meted out to them. We owe that to our own safety. Aye, sir, at this moment we owe it to every consideration of good morals and all things of that kind that should enter into our consideration that these things in our borders should be suddenly suppressed. Sir, the moral feelings and principles of men in this guerilla warfare against us are becoming debased, and I fear unless the Government of the United States or the state government, or the competent authority whatever that is, does interpose and put down this guerilla warfare, that for twenty years the men who are now engaged in it will haunt our hills as bandits, as has been the case with guerillas everywhere else where they have attempted to carry on warfare. But there are some others who from the circumstances surrounding them must be with these men, but who at this hour want to repent. And are they to be excluded from the place of repentence? I trust no such feeling will enter into the bosoms of a grave, deliberative body like this. It is true, sir, we are not called upon to act directly upon this subject. But we have here considerations presented to us that will govern, if they are to prevail the course pursued by those who are to act. Sir, I hope we are to reclaim many of those who are now erring; I hope that they will come back to the fold, and will be again—as many of them have been before—among our best citizens.

Well, sir, if these counties are inhabited by secessionists, some disposition has got to be made of them. They must be, as some remarks made by gentlemen here seem to point to—they must be exterminated by exile or death, or remain where they are. But in either case, sir, we want the territory. If they are going to remain upon it, still we want it. We want territory for an increasing population. We want our whole territory filled up, every place where there is an opening for business, agriculture or manufactures, by an industrious, enterprising and moral people.

But, sir, this is a consideration: Secessionism has got to be put down somehow, or we have got to be put down. It must disappear. If those who are secessionists do not disappear, yet the feeling must disappear. The laws must and will prevail; and then, sir, we want the territory just as much as if it were inhabited by good Union men.

There are considerations, sir, of a public character, which I think should govern us, in reference to this territory. We want a good boundary; not simply that we want a natural boundary—that we want to be separated from our neighbors always by high mountains; but want one that shall make our territory lie compact. We do not want a wedge in it here or there, or a panhandle, if the gentlemen will excuse the expression. One or two panhandles we can take and abide by. There are considerations of this kind, and it is unnecessary for me to dwell upon them. If the admission of this territory gives to the whole territory of the proposed new State an inconvenient shape, and position, exclude it; if, on the contrary, it is necessary to give it a convenient shape, to include those towns and places with which others that will be included under any circumstances, have hitherto had intercourse and commercial relations, and from which they have derived their trade—all these considerations should be taken into account, and I hope gentlemen will consider them.

Sir, I have stated in the beginning of this discussion that I did not doubt myself—and I am ready to repeat it here, after what I have stated on the subject and with every respect towards gentlemen who think differently—I entertain not the slightest doubt about the power of this Convention—or as the gentleman from Tyler has very properly ascribed powers to this Convention, that whatever it does is only recommendatory—but I have not the least doubt this Convention is acting clearly within the line of its duties in attempting to fix these boundaries according to circumstances such as I have named. The interest of the State in public property to be included; the shape, size and position of the territory to be admitted—these and others of that kind are questions to be considered here and are considerations which should have their full weight; and there is nothing in the ordinance to control us in the consideration of them.

Sir, I want to ask another question. I am a tender-hearted man, and I do not want to make gentlemen feel unpleasant; but as they say in Congress, "Duty to country is superior to all private considerations." I want to ask, sir, in a whisper that the reporter cannot hear, what do these gentlemen who had no scruples about striking out the name of the new State—where do they get their scruples about altering the boundaries? Sir, it appears to me if the one thing could be done, the other may; if the ordinance of the August convention can be disregarded in one instance, it may be in others—always supposing that what is proposed to be done is in accordance with the general scope of our duties here. For my own part I think the question of boundary not only a far more important one but more immediately and obviously within the legitimate line of our duties, and one that will affect more nearly those who are to be the inhabitants of this State than this change of name.

Mr. President, I do not know whether questions of this kind are to arise here in other portions of our duties; but I have been the more particular in saying what I have said and endeavoring to make myself understood, after so many gentlemen have spoken, that we might have come to some settled decision on the question; and if we have already had occasion in two instances to act on our own authority, as it were—or I will say on our own authority, that we may have a proper idea of our functions here—and if we are placed where we are now for the best interests of those who are to constitute the new State, to fix boundaries which are not only to benefit those to be added to it, but those already included, that we should have no hesitation in doing what we think just and proper under the circumstances.

These arguments, sir—though I have stated nothing except so far as I have adverted to facts, cited by other gentlemen—go to show that the particular counties under consideration ought to be admitted; but in connection with what I have said should govern us, I think it is only necessary to cast the eye upon the map to see that these counties properly belong to us. We may run the risk of cutting off these counties from any available market, and by leaving them outside injure them greatly. It is very possible we would injure them. Another consideration: We have called this new State *West Virginia;* and yet gentlemen are proposing to leave about one-third of what has been known as West Virginia since the year one outside of our boundaries! Well, sir, we should immediately have two West Virginias; and then there would be trouble. If that name is proper for the new State, then I think it is very decidedly proper that these counties should come in. This State was originally divided into two great sections; and I am not aware that the term "western" was particularly applied to the region west of the Alleghany mountains. I think they used to call this the "Trans-Alleghany" district. And I think if the name is worth so much it is worth while to have the game also. Now, sir, they will crowd us up, and they will soon be tacking on to us "North"-West-"ern" Virginia, and deprive us of what we have already claimed in the name. I do think, sir, there is something even in that consideration—something that shows, or tends to show, the meaning of the convention to whom we want to be deferential. We know that name was a favorite one, sir, and we may suppose that when gentlemen here propose to give the State that name, they mean to include within it as much territory that is known as West Virginia as circumstances at least will dictate. We go no further south than the counties named in this report for obvious reasons. We leave all the counties in the valley through which runs the Virginia and Tennessee Railroad; and in so doing we have a regard to their interest which I am afraid we will fail to manifest towards the counties included in this resolution, if we attempt to exclude them.

I am in favor of passing this resolution as reported by the committee, I do not think that the same reasons require that the form of the gentleman from Monongalia should be applied to these counties as named in the subsequent resolutions. Yet I think we may know from the location of these counties, if we do not know what are likely to be their sentiments—we may know from their very location, their business connections—we may judge and infer (and I think we will infer correctly) that if these people are permitted to vote free and untrammeled on this question, it will be the desire of not only a majority but I feel free to say a great majority, to connect themselves with us.

THE PRESIDENT. The question is on the adoption of the amendment.

The amendment was rejected.

MR. VAN WINKLE. Well, sir, I ask for the vote now upon the resolution as reported by the committee, and as amended by striking out the two counties.

MR. DILLE. What is the question, as amended?

THE PRESIDENT. To retain all except the counties of Buchanan and Wise. Pocahontas, Greenbrier, Monroe, Mercer and McDowell remain in the resolution.

MR. VAN WINKLE. I understand it is proposed to throw out of this the counties of Buchanan and Wise and to put them into the second resolution.

MR. STUART of Doddridge. Well, make that motion, sir.

MR. WILLEY. I desire to record my vote on that resolution, sir, and ask the yeas and nays.

The yeas and nays were ordered and taken, and resulted:

YEAS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brumfield, Chapman, Cassady, Dolly, E. B. Hall, Hubbs, Hagar, Lamb, Lauck, Montague, Mahon, O'Brien, Parker, Ruffner, Sinsel, Simmons, B. F. Stewart, Soper, C. J. Stuart, Taylor, Van Winkle, Walker, Warder, Wilson—27.

NAYS—Messrs. Brooks, Battelle, Carskadon, Dering, Dille, Hansley, Haymond, Harrison, Irvine, Parsons, Powell, Paxton, Stevenson of Wood, Trainer, Willey—15.

So the resolution as amended was adopted.

MR. VAN WINKLE. Now, sir, I move we adjourn.

The motion was agreed to and the Convention adjourned.

XI. MONDAY, DECEMBER 9, 1861.

The Convention was opened with prayer by Rev. Gideon Martin, of the M. E. Church.

Journal read and approved.

MR. DERING. Mr. President, I hold in my hand a petition signed by a large number of very respectable and loyal citizens of my county; and although the Convention has acted on the subject matter of the petition and granted the prayer of the petitioners, yet, sir, I hold the right of petition so sacred that I desire it to be read and laid on the table.

The petition was read as follows:

"We, the undersigned, citizens of Monongalia county, pray the Convention to have a provision engrafted in the Constitution for our new State which will debar all traitors from the privilege of voting, until pardoned by the Government of the United States, and then put them on probation, the same as foreigners, by law, so far as voting is concerned; and we consider all persons traitors who have voluntarily taken up arms against the government of the United States, or abetted in bringing on this deplorable rebellion."

(Signed) A. MILLER and others.

THE PRESIDENT. When the Convention adjourned on Saturday, it had under consideration the report of the Committee on Boundary.

MR. STUART of Doddridge. Mr. President, I believe the first resolution, as amended, was adopted. The next business in order, I presume, is the second resolution. I move the Convention now take it up for consideration.

MR. BATTELLE. Mr. President, allow me to suggest sir, if it would not be as well to permit this report to lie on the table for the present. We have been driving at it for several days, and perhaps we could make more rapid headway with something else; and if we could, it would be very desirable, I conceive, to let this remain on the table for the present.

THE PRESIDENT. The Chair would suggest that the resolution is not up yet. The motion—

MR. BATTELLE. Is to take it up.

THE PRESIDENT. It would perhaps be better to make a motion to pass by the second resolution.

MR. BATTELLE. I was speaking to that very proposition—whether the Convention should now take up the report of the Committee on Boundary. Am I in order? (Pausing for reply but receiving none, resuming.) I was speaking to the question whether the Convention should now take up the report of the Committee on Boundaries. Am I in error in supposing that would be proper?

THE PRESIDENT. The motion would be proper to pass by the report of the committee, or to pass by any of its resolutions.

MR. BATTELLE. Very well, sir, I will make then that motion, as a substitute for the motion of the gentleman from Doddridge, to pass by for the present the report of the Committee on Boundaries. I do not know that I need include in my motion the taking up of any other subject for consideration; but I would suggest that we have two reports that might be properly considered now, either the report of the Committee on Fundamental and General Provisions or the report of the Committee on the Executive Department. I merely make the suggestion, Mr. President, without any reference to the merits of the proposition contained yet unacted upon in the report of the Committee on Boundary; but because I suppose we may in the end gain time by permitting this report to lie for the time. The country is making history very fast, sir, now-a-days. There may be some difficulties removed out of our way in reference to this very question of boundary.

I make that motion: that the Convention pass by for the present the report of the Committee on Boundary.

MR. STUART of Doddridge. I hope it will not be the pleasure of the Convention to pass by as the gentleman's amendment suggests. It is necessary, gentlemen, that this question should be now settled in order to let other committees make their reports. The

Committee on the Legislative Department and the Committee on the Judiciary cannot report until the boundaries are settled and determined upon. We have got the question now up; and I cannot see that we can gain any more light; and as we have the subject up for discussion already, the sooner we settle this question the sooner the other committees will be able to report to this body. It does strike me that this is the first step we should take: to settle this question of boundary. I can see nothing to be gained by passing it by, but everything to lose. The question is now up before us, under discussion; the attention of members has been called to it; we have been engaged on it, thinking about it. That would be one reason; and the other reason has been assigned: that the committees are waiting for the settlement of this question. And I hope it will now be settled before we pass it by.

MR. STEVENSON of Wood. Mr. President, I would suggest to the gentleman from Ohio that he can accomplish the purpose of his resolution and those who agree with him by voting against taking up the report at the present time. That of course would postpone it.

MR. BATTELLE. I modified my proposition at the suggestion of the Chair; and I believe the suggestion was to consider simply the proposition of the gentleman from Doddridge. I understood the suggestion of the Chair to be that—

THE PRESIDENT. Does the gentleman withdraw his amendment then, to allow the question to be on the motion to take up?

MR. BATTELLE. I do not, sir.

MR. BROWN of Kanawha. We have had the action of the Convention delayed already for the want of a determination of this very question before the Convention now. We have found, in fact, that the action of the Legislative Committee was suspended and the report upon this question of boundary brought in, so that the other committees might act. To leave this question and take up something else would be hopping from one thing to another in a way that we would never attain an end. If circumstances shall write "history" that shall change our action then we may modify it when that "history" shall have been written. I know what "history" the gentleman alludes to; but it seems to me we should pursue our course and let "history" take its way.

MR. BATTELLE. I am not tenacious. I have no special object to gain. The proposition which I submitted, I offered in good faith and frankly with the view that the Convention would gain time by adopting it. I think there is nothing wrong in the proposition. It will not hinder the action of the Convention. Though they may not be ready to act on the report of the Judiciary Committee, there are other reports on which they can act without let or hindrance by the boundary question. The report of the Executive Committee would have nothing to do with it. The principles governing the executive department will be identically the same whether we do or do not include additional territory. So in reference to the unfinished report of the Committee on Fundamental and General Provisions. There is abundance to do in which the Convention can make progress without this report; and my proposition is with a view that this question need not be embarrassed at all by delay, and the minds of the members may meanwhile become more clearly convinced as to their duty one way or the other.

The motion made by Mr. Battelle, to pass by, was not agreed to; and the motion made by Mr. Stuart of Doddridge, to take up the report prevailed, and the consideration of the report was resumed.

The second resolution was reported as follows:

"RESOLVED, That the district comprising the counties of Craig, Giles, Bland, Tazewell, Russell, Lee, and Scott shall be included in and constitute part of the proposed new State, provided a majority of the votes cast within the said district, at elections to be held for the purpose on the third Thursday in April, in the year 1862, and a majority of the said counties, are in favor of the adoption of the Constitution, to be submitted to this Convention."

MR. BROWN of Kanawha. I move that the counties of Wise and Buchanan be added to that list.

MR. VAN WINKLE. It will be remembered, sir, that there was an understanding of that kind, when they were stricken from the first table, they would be inserted in the second; and I presume the motion of the gentleman from Kanawha is merely to place them in there as if they had been so reported and that they be subject to any motion that may relate to them and others included with them. It can be done, sir, by general understanding, I suppose, that these counties are in this resolution as if originally so reported.

THE PRESIDENT. The object of the gentleman from Wood then is to dispense with the necessity of a vote?

MR. VAN WINKLE. Yes, sir, I ask the general consent of the Convention, to simplify the matter, that the counties of Wise and Buchanan be included in the second resolution of the report as if originally so reported, it having been the understanding that they should be taken out of the one and included in the other. That will not hinder any motion that may hereafter be made in regard to them.

MR. PRESIDENT. Without objection that will be taken as the sense of the Convention.

The question then will be on the adoption of the resolution.

MR. STEVENSON of Wood. Mr. President, I wish to state as briefly as I can a few general objections which I have to the passage of this resolution and to embracing the counties named in it; and my remarks may apply to the counties named in the fourth resolution also, as I think they all involve the same principle.

The legal questions arising out of this matter have been discussed here already at great length and with ability. I do not now, sir, propose to say anything, even if I were able to do so, on that portion of the subject; but, sir, I wish to take another, and, as it seems to me, an equally important view of this case. I propose, sir, to examine it as a practical question. I propose to examine it just as we would examine any one of the ordinary business transactions of everyday life—just as if we were going to add some acres to our farms, or introduce a number of new partners into our business; for I contend, sir, the matter of utility is after all to settle this question. If, sir, you could extend the boundaries of this new State and yet violate no principle of law involved in the case—if you could do it without acting in bad faith to any compact that had heretofore been entered into—I say if you could without violating a principle of law, extend the boundaries of this new State from the Ohio river to the Blue Ridge mountains, you would inflict a serious if not fatal injury on this whole new State movement, unless you can satisfy this Convention that the geographical position of these counties proposed to be taken in now by the remaining resolutions, the industrial and social habits of their people and their trade and commercial intercourse are such as to make a union with them desirable, profitable and lasting.

Now, sir, if I understand this report, it proposes to go beyond anything that was claimed here in the discussion on Saturday. The discussion then seemed to involve the argument—and it had a good deal of force in it I am willing to admit—that the interest and safety of this new State required that it should possess all the territory up to that great natural breast-work, the Alleghany mountains, behind which gentlemen tell us our people were to take refuge in time of war and public danger. But now, sir, it is proposed to extend our outposts far beyond the range of these mountain barriers into the very heart of—I must say, and I can use no milder term—an unfriendly country. We propose now to make a sort of "reconnoisance in force" to the very top of the Blue Ridge mountains. If I understand this report, sir, it carries us over the Alleghany mountains. It embraces all the counties lying around the eastern base of those mountains from the Maryland line, down to the lines of Kentucky and Tennessee; and from the Maryland line, again, down to the middle, or beyond the middle of the valley—all the counties clean across to the top of, or at least somewhere on the Blue mountain Ridge—some twenty-five counties. I know, sir, some of those counties lying along down by the Tennessee and Kentucky line may be said to be on the western slope of the mountains, or rather in the mountains; but it does seem to me that they are almost as inaccessible to us as the counties that are properly within the limits of the valley. Now, sir, here are twenty-five counties we propose to take in, having according to the tables presented here a population of over half a million or nearly double the population that is to be found in the thirty-nine counties originally reported by the ordinance which called this Convention together. Now, sir, I am willing to admit that at first sight there *seems* to be, and I suppose there is, a strong temptation to take in this valley region. I know, sir, that the "sweet fields" that are spread out "in living green" in this beautiful valley of Virginia are desirable, but let me say to this Convention that if we organize a compact State now, having a people whose interests, whose feelings and whose opinions are alike, and put that State in successful operation—put all the state machinery to work—in the process of time, if this valley country is to come to us, it will come in the natural order of events. It seems to me, now, sir, if the intention is to grasp it prematurely, and before either they or we are ready, that we will meet with a disappointment something like that of the man in the fable who ripped up the goose that laid the golden eggs.

The first objection, sir, it seems to me against the addition of these counties is to be found in this fact, that their geographical position is such that for a long period of time—for several generations—we can have but little commercial intercourse, or communication otherwise, with the people of that valley region, or they with us. I do not pretend to say the time will never come when we will trade with these people and have sympathies and interests that will be more alike than at present; but I say, sir, that time is not the present. I know that the ingenuity of man, the skill of the civil engineer, and the enterprise of the American people may overcome even such an obstacle as that of the towering mountains of the Alleghany; but, sir, you will discover that now the trade of these people, the great bulk of their trade—and they have an immense trade, amounting to many millions of dollars every year—is with the people of eastern Virginia, and with the people south, some of it going to the State of Maryland; because they are united with these people by great public highways. A number of railroads pass through or over the mountain ridges to the eastern side of the Blue Ridge; and there they are met with railroads at almost every convenient point, because, if you will look you will discover that eastern Virginia is so covered over with internal improvements—and by the way, you helped to build them, particularly the railroads—that it resembles a spider's web. There is a perfect net-work of railroads there, many of them running up to such convenient distances on the eastern side of the Blue Ridge as to connect with the people of this valley country. Now, upon these railroads the products of this country, their fabrics of every kind, and their merchandise of every description, are carried safely and swiftly and cheaply to the great centers of trade in eastern Virginia and at the extreme South. They sell, therefore, their products into that country. Not only do they sell their merchandise, the products of their farms or workshops, but they make their purchases there; and they make large purchases there. You will see from this, sir, that the interests of this people are identified with the interests of a people who are hostile to this new State movement; not only hostile to this new State project, but in open rebellion (and sympathising with those who are) for the very destruction of this whole government. The sources of their wealth, then, are there; and I think I may be permitted to say in the language of Scripture, that "where their treasures are, there will their hearts be also."

Well, now, sir, I will just say here in general terms that the social institutions of that valley country, and the opinions of their people upon them, and the institutions of our people, their habits and kind of industry, and their opinions on them, are just as different and as dissimilar as is the natural geography of the two sections. Now, sir, it seems to me that that is an insurmountable objection—at least it is at present in my mind—to the addition of those counties to the new State.

But, now, sir, there is another matter that I wish to consider here, but before I do that just allow me to say this, that if I have got a correct statement of this matter so far, if this valley country is included with us in this new State, it will inevitably lead to a conflict of interests—just the same war of interests we have always had. Now, do not you see that each section will undertake to control the legislation of this new State and dictate its policy? Well, now, sir, the valley counties have a greater unity of interests than we have, and they have a preponderance of population as I have already shown you; and as a matter of course they will dictate the legislation and policy of this new State. How will they do that? Why, sir, to build up their own institutions and foster their own commerce; to extend the limits of their own trade; to enrich their own people; and the people upon the West slope of the mountains will be taxed as usual to help them. Now, sir, what will the result be? Why, it will have but one result, and that will be to cripple, to hobble and handcuff this new State in every step of its progress.

Now, there is another consideration. It was alluded to here by, I think, the gentleman from Preston, on Saturday, and that is this: that in a majority of the counties proposed to be taken in here, and probably in all of the counties—I do not know how that is —but there seems to be hardly any dispute that the sentiment of a majority of the counties altogether—and in some it is almost unanimous—is against the new State movement, as well as in sympathy with and in many cases giving actual assistance of men and money for the prosecution of this war to overturn the government of which we must form a part. Now, sir, I say for one that I am not of that class alluded to here, nor do I believe there is any man in this Convention who favors the extreme doctrine of exterminating secessionists. If there is any feeling, sir, I should rather it would be on the side of clemency; for I believe, with the great Poet of nature, that

"The quality of mercy is not strained;
It droppeth as the gentle rain from heaven
Upon the place beneath: it is twice blessed;
It blesseth him that gives, and him that takes:
'Tis mightiest in the mightiest: it becomes
The throned monarch better than his crown."

But while I agree to that sentiment, sir, I agree to that other sentiment, that this new State, and the general government of which it must form a part, owes it to its own existence and to its loyal citizens to execute force enough to crush out this rebellion in the shortest time possible; and it is particularly the duty of this Convention, while they do not favor the doctrine of exterminating secessionists that they should be very careful not to put secessionists in a position that they can exterminate us.

Now, sir, the gentleman from Preston exhibited the statistics here; and that argument has not yet been answered, I believe: that so strong was that element of secession, of opposition to this new State, that if those counties were added they would dictate the policy of this new State—dictate the kind of legislation that should be made; and as a matter of course, shape the destiny of this new State hereafter. Now, supposing it to be an extreme case that they can not elect their Governor—supposing they cannot do that—suppose they could not elect a man actually opposed to this new State movement or who actually favored this rebellion. I think you will all admit one thing and that is this, that in the local offices in those particular districts or counties where that element predominates, where it enforces itself on public opinion and that public opinion becomes a part of it, they will control all the county and State offices and all the other places of honor or public trust within the limits of those counties. Now, sir, what condition of things have you there? Why, sir, every office, from the smallest precinct office up to the highest in the district or county—to at least the majority of those offices—are to have men in them who are spies upon the new State and spies upon the general government. You would exhibit the spectacle of a number of counties in the limits of this new State, while they professed to be members of it, that were in successful or open rebellion against its authority.

Now, sir, I alluded here the other day—and I intend simply to allude to it now—to another matter that is well worth considering here. If we intend to make this new State, sir, what we have been telling the people it ought to be, and what it will be if we are judicious and cautious in giving it an organic law—if it is ever to become a competiter with the States of Pennsylvania and Ohio or other states that are connected with it by the sympathies of their people, their commerce and institutions, we must have a people and population who are to settle up the wild and waste lands of this new State of ours, and who will bring capital and energy and industry to develop its great natural resources; because you can never have a prosperous State without these. And, sir, I believe that every gentleman present will agree with me—or nearly every one—in reference to this remark. I know, sir, there is a class of men, we find them in every community, and in this community—who have a kind of dread of anything like what they call innovation. Why, sir, the sight of a steamboat carrying a dozen families with their household furniture and agricultural implements almost puts them into spasms. They do not like to see any addition to the population. Their ideas, sir, are with the past; and they are not the men, it seems to me, calculated to build up and make this a prosperous State. They do not believe in manufactories (in large ones); they do not believe in the circulation of a liberal literature; in the freedom of the press or the freedom of speech—in anything of this kind. But, sir, many of them believe just as firmly (almost) as that they have an existence that it is the certain forerunner of bad luck if they happen to see the new moon over the wrong shoulder.

Now, sir, I repeat it, if the great natural wealth which lies within the boundaries of this new State, and we are to have a population—an industrious and enterprising population who will aid in the development of that wealth and make it useful to bring in revenues to the State and enrich it, that you must shape your organic law in such a way as will invite that capital and invite that labor. Now, I do not say you should do anything to injure the people of the new State; I do not say we should adopt anything that would conflict with their true interests; but I do say that we should incorporate such features in this Constitution that while they will be beneficial to our people, they will be an invitation to that class of people to whom I refer. Now, sir, I ask the question, simply here, and I do not intend to answer it—where is this capital and where are these people to come from? I say nothing against the people here of our own country. I believe, if I know myself, I am as much devoted to their welfare as any person can be. They are just as moral, as industrious, as enterprising as any other people placed in similar circumstances; but what I do say is that we have enough of these people; we want a larger population and a greater abundance of capital to put this new State in the pathway of progress and make it successfully vital to those States on its borders. Now, sir, you can answer that question; and when you have determined the source from which this capital is to flow in—the source whence this immigration of population—then I say it would be a wise policy to shape the organic law of this State so as to hold out inducements to that class of people. I do not think you can do it by adding to this new State these valley counties. If you can I shall willingly listen to the argument that may be urged in favor of their addition; but from all the examination I have been enabled to bestow on this subject, it does seem to me that the result of the annexation or the addition of these counties will not only be to cripple and to hobble the people here as they always have been in their business, in matters of taxation and in their industry; but it will also have the effect from the way the policy will necessarily be shaped by the preponderance given to it by the addition of these counties, to shut out, as it has heretofore, the capital and population from those very places from which we desire to receive them.

I will say here again that there is one other matter to be considered: in making this Constitution, we must be careful not only to make a Constitution that will meet with favor amongst our own people—for that is a very important matter you will admit—but we must make a Constitution that will meet with favor, if possible with little discussion in our own legislature; and more than that, if we are to be successful in the establishment of this new State, we must make a Constitution that will command a majority of the votes of both Houses of Congress and meet with the approval of the President of the United States.

Now, sir, these are some of the considerations which will induce me to vote against the adoption of the second and fourth resolutions, or embracing the counties within them. I shall not say, sir, that I shall not vote for some of the counties in the third resolution; but will reserve my judgment on that matter until their claims are properly canvassed before this Convention.

MR. STUART of Doddridge. Mr. President, I cannot reconcile the gentleman's argument with any other principle than that he lost sight of the resolution before this body. The gentleman set out with his argument that we are attempting to include a portion of people here that is opposed to our government and opposed to the organization of a new State here. Now, sir, if that is a fact the resolution squarely and fairly submits the question to this people; and the argument of the gentleman that we are embracing, or attempting to, a people that is not with us in feeling does not hold good for we do not propose to do any such thing; we do not propose to include this people against their votes and sentiments and will; but it simply submits the question to them whether or not they want to be a part and parcel of the State of West Virginia. Now, sir, there is not one word in the resolution that goes to include those people against their will and consent. Now, sir, if they vote—a majority of them vote to come into the State of West Virginia, why that refutes the argument of the gentleman itself. People who are better acquainted with their circumstances, their wishes and desires than he or I will pass upon this question and tell us whether they want to come or not. Now, does not that settle the question at once? Then the argument that we are attempting to include a people here who are against us in sentiment and interest—against the new State movement—goes for nothing; because we simply propose to ask these people to indicate their wishes.

Another view the gentleman took of it, and another objection he had to it, was that we would be including a people here that would govern us in future legislation—that we would be tied down and they would rule and control the State of West Virginia. Now, sir, it does seem to me the gentleman did not look at the statistics. He certainly did not inform himself on this point. I find in the thirty-nine counties a white population in round numbers of 272,000. I find, sir, in Table B. including the counties proposed to be admitted by the resolution now before the Convention, a white population of 48,539. Can it be argued here for a single moment, if we make a peremptory line, proposing to include them even against their consent and will—can it be said that these people are likely to rule and govern the legislation of West Virginia? Can 48,000 people govern and control 272,000? We will be equally free as they would be; and in framing this Constitution—this "organic law" the gentleman spoke of so much—they did not even have a hand. They are not here to dictate to us; but the proposition we propose to submit to this people is this: are you for forming a new State and adopting the Constitution that we here make. Mind, sir, they are not to frame the Constitution; but we frame the Constitution; and submit it to them; and if they adopt our Constitution, is it not proof at once that they are with us in sentiment, in feeling, and in every respect? Are you going to say to this people, if they want to cut loose from the oppression and tyranny of eastern Virginia, that they shall not even have an opportunity of expressing their sentiments and views on this question? If this people do vote to come here, do you not see by not adopting this resolution you preclude them from passing on this thing? You say to men there whose interests are homogeneous with ours—identified with ours, who have been ruled and controlled by the unfair legislation of eastern Virginia—you say to them: you shall remain in your present position. We cut ourselves loose from our brothers who are holding out their hands and asking for relief and help. Sir, if they are opposed to this new State movement and our Government, to the Constitution we frame here, when we submit that question to them if they have an opportunity of passing upon it, they will vote against it and that is the end of it. If they are friendly to the new State, to the Government and to the Constitution we frame here and submit to them, then they will vote for it; and by your action here indicated by the gentleman from Wood, although they are for us in every respect, you say to them, sir, that they shall not come with us, simply because they lie in the Valley of Virginia. I understand, sir, these some five or six counties right along the mountains are in every respect, sir, situated as we have been and as we are now situated. They have been oppressed with the unfair legislation of eastern Virginia, it is true, as we have been. They have controlled the legislation of the people embraced in these counties and their representatives have always been with us. In the convention you recollect, of 1850-51, they sat side by side with us. There, sir, they contended for equal representation, equal rights, a fair basis and a fair taxation. Every one of them was with us. Last winter, sir, in the convention in Richmond, we find this people side by side with us; and I have every reason to believe, this day, sir, if they were differently circumstanced and were left free to act for themselves and were not overrun by this eastern oppression and the armies of this rebellion, they would be today with us; and if it should happen, sir, that this thing can be put aside and they have an opportunity to express themselves against the time that we may sit here, it seems to me unfair, unjust, unwise and impolitic to say they shall not come in. It would be the most unkind treatment I have ever seen towards any people in my life—people who are identified with us in every interest, who have been with us in all the great issues and fights we have ever had for equal rights in western Virginia: they have been side by side with us, and we are not willing to let them say whether or not they will come in the new State. Simply because they are overrun there you want to exclude them. It is unfair. I hope it will not be the sense of this body. I hope, too, gentlemen—although I have very little hope that the question ever can be fairly submitted to them within the time you want your Constitution submitted to the Congress of the United States; but we do not know what may happen between now and then. Let us, at least, act fairly and in the very best spirit we are able to; and if their circumstances do preclude them from coming with us, why, we can say, we have done all that we could; we have done everything they could ask of us and if circumstances preclude them, they cannot blame us for it.

These are my views. I will vote, Mr. President, for this resolution as cheerfully as for any that will come before this body. My heart is in it because I believe those people are with us. I believe their interest is ours and I believe they will so consider it; and if they ever get to pass on this question they will vote to come to West Virginia. It is their natural position. It is a name that has been applied to them as well as us. They are as much western Virginians as we are; and they are identified with us in every respect and in every shape; and they have felt, and feel this day, the oppression of eastern Virginia legislation, just as much as we have felt it. They are a set of counties here that in location and in every interest are identified with us. They are poor; but we are poor. They have never had one dollar of appropriation for internal improvements, as we have never had. They are like us in that respect. I understand that there is no State improvement—or at least, not any great amount passing through those counties. They have been taxed as we have been taxed to build up eastern Virginia. And, now, sir, we seek to cut loose from them and leave them to be taxed and oppressed for all time to come, when we are seeking relief ourselves and not even giving them the opportunity to come with us. I hope this Convention will adopt the resolution.

MR. POMEROY. I rise to make a suggestion. When we consider how precious the time of this Convention is, and remember that this question has been discussed at such great length in the former Convention, and since we have heard an able argument on each side, I would make this suggestion: that we take the vote on this without further discussion, unless some member is extremely anxious that we spend this day on the discussion.

MR. BROWN of Kanawha. I will not say that I am extremely anxious to discuss this question; and I will say that I feel so unwell that I am scarcely able to attempt it; nevertheless, a sense of duty impels me to express my views, however briefly I must do so.

By reference to the map it will be seen that after having adopted a permanent and fixed boundary—that is to say an unconditional boundary—for this State, which I understand it is the determination of this Convention to do—to be the boundary, without consulting the wishes of any person outside of that boundary, on the hypothesis that those outsiders may be opposed to it—we then further propose in this and in the third resolution to add, by the wishes and consent of the people of the counties, a tier of counties from one end of the State to the other, lying outside of the present fixed boundary and adjoining each other—by reference to the map, I say, it will be seen that this resolution proposes to embrace only half of it; and I will, to raise the question—for I intend to express what I say in reference to the whole of them—I shall move, if in order, that the resolution here be so amended as to adopt both the second and third class, which embrace the entire tier of counties bordering the State from the Maryland to the Tennessee line. The justice and the propriety of it, it seems to me, must be apparent to every eye that looks on the map: that it would be certainly wrong, unjust and unfair for this Convention to cast off one half of this tier of counties on one part of the State and add on the counties bordering on another portion of the State, thereby destroying the equilibrium between the two sections of the State, and throwing the whole weight, both political and physical in the other end.

THE PRESIDENT. Then the Chair understands the gentleman's proposition to embrace both resolutions in one?

MR. BROWN of Kanawha. Yes, sir; to embrace resolutions 2 and 3 in one vote.

MR. VAN WINKLE. To make them one district?

MR. BROWN of Kanawha. No, sir; not to make them one district. I am willing to do that. Even that is a fairer way; but I want to test the sense of the Convention upon the proposition that when we decide it shall decide it all at once; because I am free to say, if the Convention shall feel themselves constrained to vote off one end of this I shall feel myself constrained to vote against the addition of the other end. It is a homogeneous whole —and it should be all adopted or all rejected.

MR. POMEROY. I would like to ask a question. In including the whole in one district, then, according to the proposition, it would require a majority of all the counties embraced in the district to add any of them: might not that operate very injuriously to the feelings and interests of the two counties of Hampshire and Hardy, represented on this floor?

MR. BROWN of Kanawha. I think not, sir, these people's interests and fortunes are all allied together and all allied to us; and that is the reason why I stand here to advocate this proposition; that they shall be entitled to the privilege of speaking for themselves. It has been remarked by my friend on the right that the gentleman from Wood, in discussing the proposition, seems to have gone on the hypothesis that we are here attempting to force a Constitution and government upon an unwilling people, against their sentiment. We propose no such thing.

THE PRESIDENT. Would not the object of the gentleman from Kanawha be better effected by striking out the word "Resolved" and consolidating the two resolutions? Amend the second resolution by adding thereto all the third resolution after the word "Resolved."

MR. BROWN of Kanawha. Yes, sir, that embraces the idea.

MR. VAN WINKLE. It would be better accomplished by simply inserting the names of the counties in the third resolution in the second.

MR. BROWN of Kanawha. The idea is the same; it is the end I seek, not the formula.

I think then I am distinctly understood in the proposition, that it is to embrace the counties beginning Jefferson, Berkeley, Morgan, Hampshire, Hardy, Pendleton, Highland, Bath, Alleghany, Craig, Giles, Bland, Tazewell, Russell, Lee and Scott.

MR. VAN WINKLE. It is the counties he wants to include in Tables B and C accompanying the report of the Committee on Boundary, with the addition of Buchanan and Wise.

MR. BROWN of Kanawha. Yes, sir.

THE PRESIDENT. The suggestion of the gentleman from Wood is to insert after the counties named in the second resolution (to which were added Buchanan and Wise) the counties embraced in the third resolution.

MR. BROWN of Kanawha. Yes, sir; that meets my object.

THE PRESIDENT. The question will then be considered in that way.

MR. BROWN of Kanawha. Very well, sir. Now, Mr. President, I desire the Convention, in casting their eyes over this map, to remember that beginning at the county of Scott—

MR. VAN WINKLE. The county of Frederick is omitted from the third resolution but is in the table. Either in transcribing or printing it has been omitted from the resolution but is in Table C. Will it be understood that Frederick is included in any remarks the gentleman makes?

MR. BROWN of Kanawha. Yes, sir; I am embracing Frederick.

Beginning at the county of Scott, you run but a few miles from the Tennessee line before you reach the top of Clinch mountain, which is a mountain range dividing the Holston and Clinch rivers, and runs almost a straight course in a northeast direction until you strike the corner of the county of Botetourt. You then continue along a range of mountains dividing the valley almost in two equal sections, throwing one tier on the Blue Ridge side and the other on the Alleghany side. You still follow a mountain range—Mill mountain, Short mountain, and North Mountain—until you reach the boundary between Hardy and Shenandoah, and then follow the boundary between Hardy and Shenandoah until you come to Hampshire; and then include Morgan, Berkeley and Jefferson. It gives you a mountain line that divides the Valley from Maryland to Tennessee.

If it be the purpose of this Convention to refuse to extend to the people east of that ridge but still in the Valley of Virginia the privilege of joining this new State if they desire it, then there are high politic reasons why you should adopt this division line. It will be remembered also that as you ascend the Kanawha river from the Ohio you pass through the present boundary line, through the Alleghany mountain, on up through the counties of Giles, Montgomery, Pulaski, Carroll and Grayson, and terminate with its headwaters in the Blue Ridge. The Blue Ridge is the natural boundary between the waters that flow into the Ohio river and the waters that flow into the Atlantic Ocean in that section of the State.

Now, sir, the argument that we are seeking to embrace a hostile people has been fully answered by my friend on the right. That these people are western Virginians as much as we are cannot be questioned; and as brethren they are as dear to me as the gentlemen who live on the Ohio or Pennsylvania border. As citizens of West Virginia they are one common family in every sense. In every battle that we have ever fought with our eastern brethren they have planted themselves on this side of the Blue Ridge with us, and have never failed or faltered. They have always been shoulder to shoulder, as brethren should be, in struggling for the common rights of West Virginians; and when we stand here today to appropriate the name that they together with us have worn I cannot in my conscience say I would be willing to turn them from it or appropriate it to ourselves without giving them an opportunity of saying whether they will still take part in the cause we embark in. It is said that they are diverse from us in interest. In name they are the same; in blood the same. For, sir, let me state to you that these counties of Scott, Tazewell, Giles and Craig furnished the population that have settled the Kanawha Valley from its head to its mouth, and the Guyandotte and Twelve Pole, and Coal river, and all the intermediate smaller tributaries. We are then the same in blood relation and in kindred, and, in no small degree, in commerce. Why, then, should we cut loose from these people—our brethren and ancestors, you may say? It said we are diverse in commerce. Now, sir, they are no more diverse from us than they are from the people on the other side of that mountain; because these people are not on the line of the Tennessee Railroad. They have a high mountain barrier, between them and the valley that contains that road. They can be no more diverse from us than they will from those people with whom you are seeking to force them to unite their fortunes for all time to come. And these people having stood by us in every contest for Western rights—cut them off absolutely and leave them to the tender mercies of their eastern brethren, who have heretofore been their foes in every political sense. After we have struggled and fought together twenty or thirty years, till nearly the time to take a vote whereby we shall say the west has the power to determine what shall be the policy of the State, we immediately cut loose, just before that event, and turn them over to the tender mercies of their eastern brothers, in a hopeless minority. We have participated with them in all the benefits and blessings of past years, and we propose to leave them without regard to their wishes and interests and that too upon the merest motive of selfishness that can be adduced. It seems to me, sir, that we ought to have some higher and nobler consideration in the establishment of a new-born state. Gentlemen seem to me to have their ideas based entirely upon the hope of making a State of foreign strangers and people with whom we have no association and of whom we have no knowledge. I love my own fellows and brethren better than strangers; and will give them their rights and justice first; and then I will invite strangers here and if they do not choose to come and unite with us as a family and brethren, then I say to them go and go forever. I seek no alliance with them before our brethren who have struggled with us for equal rights and privileges. I stand here to speak for these people as a Virginian—as one born upon the waters that flow from them; for these people live upon the Kanawha river. I should feel myself, sir, humbled in my own estimation, could I stand here and ask to be cut loose from these people, and not give them the humble privilege of casting—as they have ever heretofore cast—their fortunes with us, for all time to come. As my friend over here says, we have not only fought together but we have borne the common burdens; for they have been taxed as we have been to improve the eastern portion of the state, without having received any benefit from it, for there are such mountain barriers between them and if that it is almost impossible for them to pass. And shall we leave them there to be taxed, with no friends to stand by and support them in the rear? When if we had waited till the Constitutional Convention of 1865, we have the power in our hands to control the whole legislation and destiny of the State. From the beginning they have struggled to attain the end of giving the west her proper representation; and we are now just approximating it; and if we divide we take from them the power to accomplish anything for themselves.

But, Mr. President, there is another view: that in adopting it we should be just to both sections of this new State. That there are some diversities of interest, is a fact that is clear and unquestionable. Why, sir, the people of the new State in this region have a market with Baltimore, and the people of Kanawha valley have their market with Cincinnati. Our waters flow there and we have no other highways anywhere else. West Virginia has been divided into three portions: the northwest, the middle-west and the southwest. We have stood in that region the brethren of both, neither less dear than the other to us—all friends and relatives and brethren for whom we entertain the highest respect and affection; for, sir, there is no superior love towards the one or the other; but we shall look with jealousy if it is sought by the northwest to throw off these friends from us in order to make us tributary to the northwest, to receive at their hands only what they may choose to grant. I want to stand in the new State a freeman, as I have stood of old, upon terms of equality.

I say, therefore, in adopting this tier of counties, justice and propriety demand that if one side is adopted the other shall be, and if one is excluded all shall be. I am for adopting all with heart and hand; and I expect to receive a loud plaudit and earnest greeting from those people at the polls when they record their votes to say they will come with us; and it will rejoice me that I have taken the initiative when they were not able to do it.

But, sir, as I do not wish to speak again on this subject, I will only say that I feel the same considerations of kindness, respect and the disposition to mete out justice, to all the people of Virginia. I wish to make the Blue Ridge the great mountain barrier that is to separate us. That has always been the natural boundary of the two sections. I wish when we adopt the name West Virginia, to adopt it in truth, and carry a falsehood into even the name of our State—when we are only a part of West Virginia. I wish to be just while we are generous, and show that in disposing of the interests of the Commonwealth we will protect the interests of the people who have borne our name and fought our fights and have a common interest with us. I hope that this Convention will not hesitate a moment in saying to our brethren, as we ought to say, that in forming this new State it is not our purpose to cut loose from you, or refuse you, our valley western Virginia brethren, the privilege of voting yourselves in with us if you choose.

MR. SINSEL. If it would be in order, I would offer to amend the resolution, as proposed to be amended by the gentleman from Kanawha by striking out the word "cast," in the 15th line and also in the 22d line—just to strike out the word "cast." It would read then—

The Secretary reported the resolution, as if amended, as follows:

"RESOLVED, That the district comprising the counties of Lee, Scott, Wise, Buchanan, Russell, Tazewell, Bland, Giles, Craig, Alleghany, Bath, Highland, Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick shall be included in and constitute part of the proposed new State, provided a majority of the votes within the said district, at elections to be held for the purpose on the third Thursday in April, in the year 1862, and a majority of the said counties, are in favor of the adoption of the Constitution, to be submitted to this Convention."

THE PRESIDENT. Would it not be better to try it on the other amendment and then bring up this?

MR. SINSEL. Very well; I just wanted to give notice of my intention to make that motion.

MR. VAN WINKLE. What will be the effect of the motion?

MR. SINSEL. The effect will be this, that before that district could come into the new State it would require a majority of the votes within the district, and not a majority of those that voted—that is, the whole of them—a majority of the people to be annexed.

MR. BATTELLE. Allow me to suggest to the gentleman whether his end would not be better attained by striking out the words "votes cast" and inserting the words "qualified voters."

MR. HALL of Marion. I believe it is not in order to offer the amendment at this stage.

Several Members. Yes, sir.

MR. HALL of Marion. O, then, it is but two stories. I was under the impression it was already three stories high.

The hour for vacating the Chair having arrived the Convention took a recess.

THE PRESIDENT (remarking) We have adopted a resolution pledging ourselves to meet here at 2 o'clock and go from here to the Fifth Ward School; and I hope members will bear in mind the adoption of that resolution.

FOUR O'CLOCK, P. M.

The Convention reassembled.

THE PRESIDENT. When the Convention took a recess, it had under consideration the second resolution of the report of the

Committee on Boundary, and the proposition of the gentleman from Kanawha to insert in the second resolution all the counties contained in the third. That proposition was further proposed to be amended by the gentleman from Taylor. Is that amendment still insisted on?

MR. SINSEL. If the Chair decides that it is not in order I will withdraw; but not unless it is decided out of order.

The amendment I wished to move was to strike out "votes cast" and insert "qualified voters."

MR. POMEROY. I hope my friend will withdraw that till this amendment is decided on; and that will come in on the whole resolution together if that fails.

MR. SINSEL. I have no objection to withdraw it.

THE PRESIDENT. The question then is on the amendment of the gentleman from Kanawha.

MR. STUART of Doddridge. I again find myself under the necessity of taking exceptions to the amendment of the gentleman from Kanawha. The object of the Committee in classifying these counties into various districts was for the purpose of accommodating, as far as possible the feeling and sentiment of the different sections of country. What the amendment of the gentleman now proposes is to include in the second resolution not only the counties of Lee, Scott, Wise, Buchanan, Russell, Tazewell, Bland, Giles and Craig, already contained in it but the counties of Alleghany, Bath, Highland, Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick, embraced by the third resolution.

Mr. President, one of my reasons for opposing the amendment proposed by the gentleman from Kanawha is that we tie down these Union counties—counties which we have every reason to suppose are Union—to a set of counties that perhaps would vote them out of the State. The resolution as it stands submits the question to the various districts—requiring a majority of the votes cast and a majority of the counties in favor of the new State to secure their admission. Now, sir, by attaching these counties to the counties of Alleghany, Bath, Highland, Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick, you fix them in such a way that they will be influenced by the secession vote of the other counties; and counties that are anxious to come with us will be kept out from the fact that in this large district, as proposed by the gentleman, there will be no possibility for the Union men to carry a majority of these counties; and although nine out of twenty may vote to come into the new State, still the eleven voting against it will carry the nine Union counties out of it.

It seems to me it would be much fairer and better to let these people vote by districts. These counties of Craig, Giles, Bland, Tazewell, Russell, Buchanan, Wise, Scott and Lee lie away down here in what we call the "Southwest." The counties of Frederick, Jefferson, Berkeley, Morgan, Hampshire, etc. lie, sir, in the northern part of the State right along the Baltimore and Ohio Railroad. We are more intimately connected with them, and their interests are more identified with ours than the counties down in the southwest. We see one or two of these counties have had an opportunity of expressing partially their views. The counties of Hampshire and Hardy are represented on this floor. We know nothing about the sentiments of the people down here in Giles, Tazewell, Russell, Scott and Lee. We have every reason to suppose—or at least I have—that at the present time those people are adverse to the adoption of the new State. I have every reason to believe the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson are favorable to the new State and will come with us if they can get an opportunity. And I have every reason to believe that these people will be in a situation in a short period of time to be able to express their opinions. We see a part of them are already cleared of rebels. We have an army right in their midst—in the counties of Hampshire and Hardy; and in all probability before this question is submitted to these people they will have an opportunity of acting. But if you attach them to these other counties in the southwest, by the time you propose to submit this question to them, these other counties cannot even vote, and you tie the hands of the counties that can: and it is virtually saying to these people, you shall not come in. I cannot see why it is the gentleman wants to tie up the people of the northern border here on the Baltimore and Ohio Railroad, with these southwestern counties.

Now, Mr. President, I believe if this thing can be postponed, and the question submitted to these people at a later day than, probably, it will be, after the rebel army is completely cleared out of the southwest, so that these people can vote new State or no new State—if the question is presented to them in this form, and they have either got to go with the old State or the new—they will vote almost unanimously to come with the new State. But, then, sir, from the circumstances surrounding them, I do not believe they will have the privilege—at least in the time indicated by the Convention, to express their sentiments upon it. Therefore, I do not desire to see one district denied this right which is granted to another. I do not want to see one district which may have an opportunity of expressing their wishes on this matter tied to another that cannot have it. As I before said, it is virtually saying to these counties of Hampshire, Hardy, Morgan, etc. that they shall not come into the new State, unless circumstances change very fast and the armies of the Federal government prevail at a much earlier period than we can now anticipate. It is effectually, gentlemen, discarding the principle of this resolution. It is saying that you do not want to give these people an opportunity. Let them all come up fairly and squarely. Let every section of country express its own sentiments. If one section of country is relieved of the presence of the rebel army and they have an opportunity of being heard, let us hear them. I for my part feel bound to oppose the amendment offered by the gentleman from Kanawha.

MR. POMEROY. If it is ordained by the powers that be that this discussion must go on, I beg leave to offer a few reasons why I will be constrained to cast my vote against the amendment of the gentleman from Kanawha. As I think it has been very correctly and very forcibly stated by the gentleman who has just taken his seat there is no propriety that I can conceive in grouping these two districts into one. I do not now recollect the names of all the gentlemen that compose the Committee on Boundary; nor is that material to the great matter in hand. I know the gentleman who has just taken his seat is the Chairman. I have no doubt that they have valid and forcible reasons that weighed upon their minds in coming to the conclusion at which they arrived, that there were certain counties grouped together, because they had in many respects—if not indeed a common interest, that their people mingled freely together; that they had intercourse one with another. Each of them knew the minds of each other; and therefore they were thrown into groups and called a particular district, while another set of counties were thrown into another. And I cannot conceive what is the real reason for offering this amendment. I listened with all the ears I have to the gentleman from Kanawha; but I cannot perceive any valid reason for taking this course. There are twenty counties now grouped together. If eleven of them open no poll whatever, why then, the other nine cannot possibly come in; because the resolution provides that not only must you have a majority of the votes cast, but you must have a majority of the counties. It will take eleven to be a majority of twenty. Therefore, if these counties of Hampshire, Hardy, Berkeley, etc. vote to come into the new State, they are deprived of that privilege by the vote of eleven other counties, wherever they may be. And I think it is not talking in a spirit of *persiflage* to say that there will be no poll opened. I confess I have read the history of this rebellion wrong if some of these things are exactly to the full intent that the gentlemen in the person of their arguments would appear to wish to show. If there are any counties proposed to be received here that had difficulties in reaching this place it would be the county of Frederick or Berkeley or Jefferson, and yet as early as May we find the delegates from those counties on the floor of a Convention here. But at what time in the history of this proceeding have we seen a man from the county of Craig or Tazewell; but what particular camp of either of these armies was located in these particular counties we never have heard. Why were they not here? Ah, but there is another fact more stubborn than that. Why in the polls of May, the counties of Hampshire, Hardy and Berkeley—and even Jefferson—poll, most of them a majority and in all of them a respectable vote for the Union; but when you come to Tazewell and Craig, the Union votes are "like angels visits." Is this so? If it is, is it not because their sentiments are not with the people here? Because they willingly go at the nod of Jefferson Davis and Company. They have not even a single letter here to show that they wish to have anything to do with us. What is their tone in regard to the provisional government we have established here? "Bogus Government!" If a man is compelled to stay at his home, he is not compelled to give utterance to language like this in regard to a government recognized by the government of the United States. He is not bound by every action when he rises up and when he lies down to be teaching his children and neighbors that this government by which we free ourselves from the bondage to which we have been subjected heretofore is a bogus government. I tell you the secessionists have learned this all over the land. They all sing the same tune everywhere, from the upper end of the Panhandle to the lowest end of the State of Virginia. They all cry out this is a bogus concern; and they are using every effort that men can possibly use for the defeat of the whole thing. And, say gentlemen, these men are our friends! We read somewhere of a man that had friends in former times; and when the battle waxed warm they vanished away. And I think this is the kind of friends we have in Craig and Tazewell.

But I do not want to enter into a full discussion of the merits of these different districts of counties upon the amendment. I wish to adhere strictly to a consideration of the amendment that is before us—that is to group all these counties together and let them all stay out unless a majority of them say come in. I am opposed to that. I am opposed to placing counties that have shown some signs of a desire to be with us on the same footing with counties that show none whatever that they want to have anything to do with us—that show, on the other hand, their hostility on every occasion that they can. I will venture this prediction, and I do not fear successful contradiction of it on this floor, because I think I can bring proof to establish it—that upon the streets of Charleston (S. C.) the people did not more rashly rush into the hostile army than did these people from the county of Tazewell and those adjoining. Not content with staying, as they sometimes said, to defend the "sacred soil" of Old Virginia, we find men from these counties fighting at the battle of Piketon, in Kentucky. What made the soil of Kentucky so sacred to these men that had always had such strong affection and were bound by so many ties to the "Old Dominion?" They certainly didn't claim that Piketon belonged to them! Why so eager to meet our army under Nelson and Moore and Harris at Piketon? Was that to defend the sacred soil of Virginia? It was because they had a love for the soil of the rebellion. I have fears they will open no polls if you make it the third Thursday of April, or the third day of the next January, or the last day in the afternoon (Laughter). Then why should we make these loyal men stand or fall with them? They have no desire to be here with you. There is no insuperable barrier that keeps them from being here today, if they wished to be here. The same road that took them to Piketon—it was a very circuitous route—might have been travelled by them. They might have dispatched a messenger in some way that would have expressed their wishes on the floor of this house. But no such expression has come—no desire to be with us. Their interests, it is said, are identical with ours. Strange that they have not manifested it in some way by calling to us in the day of adversity! That man who is a friend only when the sun shines upon me, and whose love is all gone when the day of darkness comes is a professed friend that I would have less confidence in than an open enemy. The man that is a true western Virginian and a true man to those stars and stripes that hang above you, Mr. President, now, is the man that clings to them with tenacity when the day of trouble is upon us. It is easy for a man to be a Union man when there is no secession element around him. It is an easy thing to speak out his sentiments boldly in behalf of that Flag when it is waving in triumph over us; but it is a different thing to stand by it when its enemies trail it in the dust, and bring disgrace and dishonor on it and on those who have hitherto successfully upheld it. It was eloquently said here, not long ago, that there was no Southern Confederacy; and I thank the Lord that there never will be! This Union is "one and inseparable" I know that these eastern Virginians will after while be as loyal as any men, apparently; and this secession element amongst us will not only be loyal, but when they come 'round asking the people to vote for them they will say they were always true to the Union—when they find the current is the other way.

But what evidence have you that these people could open polls on the third Thursday of April? The general government is not directing much attention to such counties as Tazewell and Craig. They have more important points in view. There is no great importance in gaining a victory down there. What would you have gained by a triumph in the counties of Scott, Tazewell and Craig? The general government are looking at the important points where the enemy will feel that the Government of this country when it strikes a blow has power to make that blow felt and respected. They are not going to spend their time in sending bands of men into this rough uncultivated country, to hunt up a few men who are in war against the Government. And you have no evidence whatever that there will be an army march there before April. What evidence have you that these men who have nursed this rebellion and started it, to the present day, will so speedily be brought to repentance that they will have changed their entire course and be willing to come up and say, on the third Thursday of April, it is true from May to December we villified and abused and exhausted the vocabulary with abuse of, this provisional government, and this idea of a new State; but all at once the scales fell from our eyes and we discovered the error of ways, and we come to you, brethren, in penitence, and say, here receive us. What evidence of that have you, Mr. President? None whatever.

But look at the argument on the opposite side. The other day it was right to go to the Alleghany mountains, because nature had built up a barrier there that could not well be left undefended.

We must go up to the Alleghanies, whether the people were willing to come or not. There is a great natural boundary; that is plain upon the map. That was the argument, though, that there was a great natural boundary; and now we have got to that and these same gentlemen want to go over on the other side, so that wherever the enemy comes up we will have to pass over this great natural boundary to defend ourselves over there. Now, isn't it strange what queer creatures we men are—that the argument was that they must come in, *willy nilly*—that they must not be left to their choice at all. But now the whole aspect of things is changed, and now the gentleman says he will leave it to their own free-will, and if they come, we will say, very well, brother, we receive you, and if they say, No, why then the gentleman will say to them depart forever, we want nothing to do with you. Why would not that have done in regard to the other counties? If it is good in one case it is good in the other.

But there is another great objection I have to this: the legislature of the State of Virginia is to give her consent to this matter. When will this legislature give it? If I understand aright the regulations in regard to the Legislature of Virginia, their session is ninety days. Those ninety days don't count by taking five days out of one month and ten out of another, but from the time they assemble it expires in ninety days, unless three-fifths think it necessary to prolong the session. They can prolong for thirty days. Add thirty to ninety, and I think it reaches to about the 28th of March. When do you propose to submit this matter? On the third Thursday of April. Oh, but you are met with the argument that the governor can call the legislature together in extraordinary session. Well, now, would it be wise to hazard this whole new State movement on so many contingencies? To delay until after the third Thursday of April and then risk having the legislature reconvened? I understand—and I believe I am correctly informed—that already a resolution they have introduced looking to an adjournment of that body upon the 19th of the present month. One of the great reasons, I judge, why, is that the action of this Convention may be submitted to the people and come up before them when they assemble again. Suppose they adjourn and meet again sometime before the ninety days expire, go on with other business and still this matter is not ready to come before them—when are we going to get through to Washington? If this matter is to be delayed, contingencies may arise that will be against us. Let me mention a contingency that I think has some weight. The legislature that is now in session does not call itself—I appeal to honorable gentlemen who are members of that body as well as this, they do not call themselves—a legislature of a little part of Virginia; but they say we are members of the legislature of the Old Dominion, from the Eastern Shore to the Ohio. We do not represent any small part of the State, but we represent it all. We are the men that are clothed with power to legislate not for the people within the bounds of West Virginia only, but for the people that live in the city of Richmond, and everywhere else within the bounds of the state. Is not that true? Why is it we have men on the floor of that house even from the banks of the Potomac right from near to the seat of government of the United States? Is it not so? Suppose these men are as cunning as they have manifested themselves in carrying on this rebellion and they say the consent of the legislature has to be granted. They were elected last May in the counties of Rockingham, Rockbridge, etc. members of the legislature as well as the honorable gentlemen that have been sitting in the city of Wheeling. Suppose they come out here and claim their seats and vote on this matter of giving consent—where are you then?

MR. VAN WINKLE. Will they take the oath?

MR. POMEROY. Take the oath? I would as lief swear a rattlesnake never to bite again and let it go as to swear one of these fellows. Take the oath! What is it they are required to swear? An oath of allegiance to the general government and the newly-formed government of Virginia. I think they would take that without having very many scruples about it. Why, they are in a dreadful predicament. They are engaged in a rebellion that they do not see the end of, and they are surrounded by circumstances that might very strongly influence them in taking such an oath and to come out here and say, Yes, we are loyal to the government; and we are loyal to it as we understand it and when we think it is rightly administered and say, we do not grant our consent to this division. I am no prophet, but I tell you this is far more likely to arise than it is that you will get the first vote for this new State in Tazewell county. I would not be afraid to stake my reputation that the one is more likely to occur than the other. If I thought as they do, I would do as they do. If I thought this government was all bogus and spurious, I would have nothing to do with it. They say they think so, and their actions say they do think so. Now I want to say—don't want to consume the time of the Convention; I suggested that the discussion should close this morning, and it would therefore be inconsistent in me to consume much time—I think the members of this Convention are true to the people who sent them here, and that to carry out their views they will vote against this amendment and then let the counties stand upon their merits. It may be that it will be necessary to take out Hampshire and Hardy from this other group of counties. It may be that owing to the peculiar circumstances that surround them it will be necessary to take them out of the group. I do not know that that will be done; but I do hope that this Convention is not going to do that which will materially injure the prospects of the new State at the city of Washington. A man would take up this other and say: why these people say that out there they are just about like we are over in Ohio; that they have the same kind of feelings and interests and institutions that we have. And he will look along and find a certain county included that has more slaves in it than white people. Why, I have been voting for years against this principle, and yet you ask me to vote for it. It is true, you say you are all right; but here you introduce a disloyal element—introduce men that have been warning against us all the time—men saying we ought to be put not only out of power but off of the face of the earth. You ask that these men that have been in actual arms against the general government shall now be admitted with all the rights and privileges of any other commonwealth. And you ask them to receive you. If these counties have claims to come in let them be presented here on the naked resolution reported by the committee.

MR. BROWN of Kanawha. Please to tell me, sir, what county you allude to that has more black men than white in it.

MR. POMEROY. Clarke county is one of them.

MR. BROWN of Kanawha. That is not the group we were speaking of.

MR. POMEROY. That remark is intended in opposition to introducing any of those counties that will prejudice our cause at Washington. Clarke, I think, is on one of the lists.

THE PRESIDENT. The amendment takes in Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick, leaving Clarke out.

MR. POMEROY. Well, there is a number of these counties come so near it, it is very plain to any man they will not be received.

MR. BROWN of Kanawha. Will the gentleman please inform us what counties come near it.

MR. POMEROY. There is a number that have a large colored population. Here is, for instance the little county of Tazewell which has 1,202 slaves.

MR. BROWN of Kanawha. What is the number of whites?

MR. POMEROY. The number of whites is 8,627.

I want to say one word, Mr. President, in regard to the position we occupy; and I will use very plain language. I consider that we in this part of Virginia—now called new Virginia—if this application fails before Congress, occupy an extremely ridiculous position. We have been in Convention time and again and we have gone on and made the people believe this new State project was a matter beyond all question and all doubt. We have been assured that if certain things were done—and one of them was argued strenuously by a distinguished member of the former convention, who now holds a prominent position in the Congress of the United States, that if we would keep the boundaries down and not include this foreign and hostile element—our success was beyond a peradventure. But it was said at the same time that if we introduced it, it was in his opinion, to incur certain defeat. Men everywhere that I converse with in this region of country say that every county we add over and beyond those specified in the ordinance for a division of the state and which have expressed by letter or in person a desire to be brought in, is incurring a great risk at the city of Washington or before Congress. Now, why should we do all this? Oh, says a man, if you get these counties of Craig and Giles and Bland, Tazewell, etc. they will help pay the public debt. They will! Will they? If the public debt is apportioned according to population, will they help us any more than the amount of additional debt which will fall to our share? If a certain county, when the public debt was divided would have a certain amount to pay, if you had another county of the same size and paying the same amount of revenue with the county first named, will you not have just double the amount to pay; and then what will you get? Oh, we are met with the argument, it is a glorious thing to have an extended territory and a big state. There is no telling who will be governor after a while; and it is a great thing to have a big dominion. But the history of this country shows that the states that this day have money in their treasuries and loaned out in addition to their public improvements are the smallest states in the Union. Any gentleman ask what states they are? They are Delaware and Connecticut. They are not only out of debt but have money invested and drawing interest. And are they very large? Ever hear any person saying down in little Deleware they would like to have a few more counties just to have a bigger name? Not at all. The prosperity of a state does not depend on the extent of its territory. It depends on the people being identical in interest and harmonious in action; when they come to legislate through their representatives, legislating for the good of the whole people and not for the good of a certain portion of the people, who may have preserved the power in their hands, when they know that they are legislating against the interests of the other portion of the people. That is what makes a people prosperous. It is a liberal policy, where the people feel they are all freemen—where they can stand up in their majesty and strength and assert their rights, and having a people that

"Know their rights; and knowing dare maintain."

And such a people we have, if we do not introduce this foreign and hostile element. But if this people are to be voted in, why vote them in as the committee recommends.

I have thus, Mr. President, given very briefly my reasons, that the gentleman from Kanawha may know how I stand. I may have spoken with some warmth; but when I speak, Mr. President, I speak like I was in earnest, but with the best of feelings towards this gentleman and all others. When I speak, I speak as if I meant what I say.

MR. BROWN of Kanawha. I do not rise to discuss the question. I can very heartily reciprocate the kind feelings of my friend over the way. Most of his argument, it seems to me was predicated on a state of the case that it was not my purpose to present. I shall therefore, to correct that impression, ask for the reading of the resolution as it will stand if the amendment prevail.

The Secretary reported it as follows:

"RESOLVED, That the district comprising the counties of Lee, Scott, Wise, Buchanan, Russell, Tazewell, Bland, Giles, Craig, Alleghany, Bath, Highland, Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick, shall be included in and constitute part of the proposed new State; provided a majority of the votes cast within the said district at elections to be held for the purpose on the third Thursday in April, in the year 1862, and a majority of the said counties, are in favor of the adoption of the Constitution to be submitted to this Convention."

MR. BROWN of Kanawha. I desire the amendment to conform to this: I do not wish that one of these sections should be the means of defeating the other. That is not my object. I only wish in presenting them to this body, to present them both as a boundary that the people shall have a right to vote upon. If the southwest section does not vote itself in by a majority of the people and counties in that section, I do not wish to force that section in, by tying on a vote at the other end of the district, against their will, and therefore I have drawn up a modification of it, so as to vote on it as two separate districts by inserting after the second resolution complete the words "and that the district comprising the counties of Jefferson" and so on shall be admitted if they vote in by a majority of votes and a majority of the counties casting the vote. It was not my purpose to change the precise relationship in which these two sections stand as first reported by the Committee on Boundary, but that in taking the vote we shall submit them to the Convention both at once.

THE PRESIDENT. That was the object of the Chair in proposing to the gentleman from Kanawha to strike out the word "Resolved," between the two sections.

MR. BROWN of Kanawha. Then, sir, I will ask to withdraw that amendment and insert this in lieu of it that it may raise the question fairly: Strike out "Resolved" at the beginning of the third resolution and insert "and." That presents the idea complete I believe.

MR. SINSEL. I suppose it will now be proper for my amendment to come in.

MR. STUART of Doddridge. Let us test this amendment first.

MR. SINSEL. But then that cuts mine out.

THE PRESIDENT. The motion is only to amend; and the amendment suggested by the gentleman from Taylor, would be in order at any time between the disposition of this amendment, and the vote on the passage of the resolution.

MR. SINSEL. If I understand the way he has changed it now, it just stands as originally reported by the committee.

MR. BROWN of Kanawha. No, sir; it brings on the vote upon both districts at once.

Will the Secretary report the amendment?

The Secretary reported as follows:

"RESOLVED, That the district comprising the counties of Craig, Giles, Bland, Tazewell, Russell, Buchanan, Wise, Lee, and Scott shall be included in and constitute part of the proposed new State, provided a majority of the votes cast within the said district, at elections to be held for the purpose on the third Thursday in April, in the year 1862, and a majority of the said counties, are in favor of the adoption of the Constitution, to be submitted to this Convention; and that the district comprising the counties of Jefferson, Frederick, Berkeley, Morgan, Hampshire, Hardy, Pendleton, Highland, Bath, and Allegheny shall also be included in and constitute part of the proposed new State, provided a majority of the votes cast within the said district, at elections to be held for the purpose on the third Thursday in April, in the year 1862, and a majority of the said counties are in favor of the adoption of the Constitution to be submitted by this Convention."

MR. VAN WINKLE. I do not feel like saying a great deal on this subject; but I do not like the vote to be taken upon the resolution in the shape it has taken, after such a general course of argument, without a word or two. I hope my friend from Kanawha will withdraw his amendment, and leave these districts as they were. I think the gentleman from Hancock has shown that there is a fairness in that towards the counties interested, and that by leaving them as the committee placed them it will tend to insure a proper expression of the feelings of the people—or rather the result that will be returned to us will be more in accordance with the wishes of the people, than if the two districts were blended together. There are eleven counties in the one district in the southwest and ten in that which will be the northeast. The eleven counties contain 20,000 white population less than the ten counties. But while this double majority is required—which, I suppose, would be very proper if the districts are properly adjusted—

THE PRESIDENT. The impression of the Chair is that while they are all thrown under the one resolution now they would not be counted together on the vote at all. Under this resolution the counties in the northeast district might come in, while those in the other might be thrown out.

MR. VAN WINKLE. Then, I can see no object, sir, in the amendment, unless they are made in one great district, whether they are passed in one resolution or two.

MR. BROWN of Kanawha. It is to enable the Convention to vote on both at once.

MR. VAN WINKLE. It is to operate merely on the vote of the Convention, is it? Well, sir, I hope that is not necessary. I want to consider them, sir, separate, and show if I can that there are reasons why each of these districts should have an opportunity to express their opinions separately on this subject. In relation to these southwestern counties, about which the gentleman from Kanawha is very properly anxious, my own impression is—notwithstanding what has been said in relation to their votes and conduct, and judging, sir, from their neighbors and the history of those counties which we have in more detail than from the counties in question—judging that they are a similar people to those around them, and that a mere geographical line, sir, makes but little difference in the opinions and interests of people—and men are governed by these more or less—I should infer, sir, that if an opportunity had been afforded to the people of these counties, as to many other counties, to my own and this, and those in the immediate vicinity—their vote would have been different from what it is reported to have been. We all know, sir, that in a very early period of this struggle the mails were cut off. We know also that their mail facilities have never been very great. Their population is sparse, although some of them in their aggregate will rank with a great many other counties in other portions of the proposed State; but as a general rule, their population is sparse and from the mountainous character of the country is in some degree inaccessible. I do not suppose poll-books could have been sent to those counties for the purpose of taking this vote. The convention of August ordered poll-books to be sent to those counties in which it was proposed to take the vote; but I doubt if there were any sent. We know there was great difficulty in circulating documents in Kanawha up to the last moment. Well, sir, if such was the case with Kanawha, it was certainly so with these more remote counties, without the same facilities. I am therefore, sir, very strongly inclined to believe that when proper information reaches the people of these counties—when the thing is properly explained to them—when they have learned what we have done and what we are proposing to do for them—I apprehend, sir, they will only be too happy to accept it. If they become satisfied in their own minds, sir, that a State is to be set up here—say the thirty-nine with the addition of McDowell and the counties in table A—then their interests would lead them to this connection. I have looked very closely at the map—as closely as I could—at the direction of their water courses, which governs the channel of trade. It governs the leading roads or lines in a county. It is also in their direction that our railroads are built, a great deal with reference to them, because it is only along their valleys that favorable ground can be had. Looking to that, sir, their position with reference to the mountains—seeing that they are cut off, as it were, by a chain of mountains from direct intercourse with what will remain the old state—that the country towards Kentucky, west of them is more open—that their water courses penetrate in that direction—and other things of this kind. I infer at once that their commercial interests would lead them to a connection with the new State. And, sir, so inferring and so believing, I do not feel that we would be doing justice to those counties to exclude them—I do not say from coming into the State; but to exclude them from the opportunity of saying whether they will come or not. It might be a different question in regard to these counties if we were placing them in the same category as those which we acted on Saturday. If we were about to say peremptorily that they should come in, it would indeed be placing them in a different position; but when the question is merely: shall they be permitted to say for themselves, on a principle which I think is as fair as anything that can be offered—that of a majority of the people and of the counties—when it is only to say this to them, sir, I do not feel we would do either justice to them or to ourselves if we withheld from them the opportunity. If they are so averse to a union with us, as the gentleman from Hancock affirmed—if they did not take that view of their interests which it seems to me is the proper view—or if from any other cause they do not incline to the connection—they have only to signify it by their votes, and there is the end of the question so far as relates to them.

It seems to me, sir, then in the absence of positive information as to how they would vote, or as to what their feelings may be in reference to a new state, we have reason to suppose at least that a part of them are favorable to it.

I think again, sir, we should not do justice either to them or to ourselves to withhold from them the mere opportunity of voting themselves in. I have already said, sir, that I do not wish to see the two districts joined together; nor I think it is going to affect the votes of this Convention one way or the other. I think those who are disposed to give the State a liberal share of territory—and that we certainly ought all to seek for—those who are willing to include sufficient population to give her respectability among the other states of the Union—those who are disposed to give this question when it comes before Congress the importance of a suitable population—and, sir, permit me to say that in asking the Congress of the United States to admit us as one of the states of the Union, with a white population of only 272,000, and give that State as they must necessarily give it, two Senators, unless the doctrine of Mr. Cameron, that they can override constitutional provisions prevails—I say, sir, when we go there asking for two Senators with this population, when in the State of New York upwards of three million have but two Senators—in Pennsylvania nearly three million, in Ohio two and a quarter millions, and I believe there are several states that number a million, and there are some that come very near that number—now, sir, if by taking in this territory, that which is embraced in all the resolution, we shall go there with a white population approaching 600,000—then, sir, we may go before them and with some propriety ask them to admit us and concede to us the usual privileges of a state. We come also with the argument which the new states, or territories erected into states, may use, or which is so necessary that it is not necessary to use it: they come there with a great extent of fertile land; and although at the moment of their admission they may be no greater in population than what we have, yet, sir, there is almost an absolute certainty, which no man will attempt to gainsay, that within a very few years their population will, perhaps, be equal to that of a fourth of the rest of the Union. But, sir, confining ourselves to these thirty-nine counties—considering how much mountainous land we have—considering that perhaps the most valuable occupation of a great portion of it will be the raising of sheep and cattle, and consequently a large population will not be called for—considering all these things—the rugged character of our country, and other circumstances connected with it—we cannot wield the same argument as a new state of prairie country and say we expect within a given time to be a numerous population. We may double in time; but still in comparison with the loyal states of the Union, we must be a small state. I think that is the difficulty which members of Congress will encounter. Because with sixty-four Senators there, New York for instance, has one-thirty-second part. Now, increase that number to one hundred and New York has one-fiftieth part. This is a consideration that they will pay some attention to; and it may be a difficulty between members of Congress and their constituents about admitting so small a territory into the privileges of a separate state.

I am therefore anxious to embrace within these boundaries all the territory that can be properly embraced within it—all that is likely to be of benefit to the new State—all that lies so contiguous and compactly with us as to tend to make our State better than without it. I think, sir, that in reference to those counties which are embraced in table C, there will hardly be a gentleman of this Convention prepared to say he would not have them if he could get them. They are, perhaps, some of them the finest in the new State, and bid fair to be the wealthiest. They also contain within their limits that great public work known as the Baltimore and Ohio Railroad, one upon which the prosperity of this section of the State and my own depends, but upon which is ultimately to depend, to a greater or less extent, that of the whole territory we propose to annex.

Sir, I look to see if this new State is erected and the business of the country returns to what it has been—I look to see another branch running from the Baltimore and Ohio Road, at Grafton, or the Northwestern Virginia Road, at Clarksburg, through Weston, through Charleston and away down into Kentucky. That part of the State, and this, perhaps every portion of the thirty-nine or forty-four counties—will have this channel of connection with the seaboard. That will be according to what I have already stated —in the direction of their principal water course, the Ohio river, and therefore in the direction of their trade. If we annex these valley counties, sir, again, that great work will come into play. The railroad now leading from Harper's Ferry to Winchester will be extended to Strasburg, and further will penetrate the valley. In this way, sir, I apprehend the fostering of the Baltimore and Ohio Railroad and its connections becomes an interest to every one of the citizens of the present and proposed limits of the new State. It is something, sir, towards the interests of that road—and which cannot be so well understood by members who have not been so directly connected with it as many of us have—but it will be a great thing for the interest of that road whenever it finds itself in the hands of friends. There is no other reason, I believe, why that road has not come up to its great connections further south except the adverse legislation of Virginia. They have set themselves on the erection of other works—those leading to their own capitals in the East—their own seaports; and have endeavored from time to time to throw obstacles in the way of that road. It is natural, sir, they should want to promote their own interests more than the interests of those far remote from them; but as a portion of that road is constructed through what are now the northern counties of Virginia, unless they are brought into the new State, that portion of it must always remain subject to such adverse legislation. It is, therefore, highly important to that interest—highly important to every interest that is now or may become to any extent dependent on that road—and many are dependent on it now indirectly that I hope will become more directly so—it is of importance I say, that that road should be placed wholly within the State of Maryland and the proposed State of West Virginia.

These are considerations which I trust will not be overlooked by the members of this Convention. If the counties below us—below the Little Kanawha river—which no part of that railroad now crosses, are looking forward to that prosperity which seems to be in a great degree dependent on the erection of railroads—if they are looking to have themselves put on a footing with the states north and west of them—this I think, sir, is their opportunity. I have no faith, sir, that under any circumstances will the erection of the Central road be resumed—that it will progress beyond its present terminus; and my want of faith is on this score: they have pushed and finished with much more zeal and industry the Virginia and Tennessee Railroad. That road is in the direction of a very heavy trade. Up to the day these troubles commenced, Richmond and Norfolk were reaping a very fine harvest from it. That road must have an eastern transportation if it ever succeeds in reaching the Ohio; but it cannot have a western transportation if there is nothing but a few boxes of manufactured tobacco to be carried over it. It crosses the line of trade; and that is enough to show what its fate will be in the future.

I think, therefore, the counties, even those that lie south of the Little Kanawha river, looking to be one day penetrated by a branch of the Baltimore and Ohio Railroad, (whether belonging to that road or an independent company), knowing at present that it is their shortest and best connection with the east—I apprehend that those gentlemen will overlook minor considerations and join with us in endeavoring to unite those counties to the new State.

I am a little surprised to hear one objection that has been started here on account of the numbers of the slave population. Without wishing to go into an argument on that subject, for it is a somewhat gloomy one, and I deprecate such an argument on this floor, I will merely state: in the first place, if we add all this territory embraced in the recapitulation, including the four tables and the four sets of counties in the tables, to the original thirty-nine counties, the whole slave population will be but eight-and-a-half per cent. And now, sir, what does that amount to? Is there anything in that to raise any question whatever? Is that enough slave population to give it the character of a slave-state? And if it is not practically a slave-state, can even those who long for a free state object to it? But, sir, let us look at another fact in connection with that. In 1850, as the gentleman from Doddridge stated, there was but one vote, if I recollect rightly perhaps not one—but there was but one vote from the whole valley that was not given in favor of the white basis, as the principle of representation. And now what more do gentlemen ask for in relation to that? We have fixed permanently in this Constitution, as a fundamental principle, that the white population are to be the only citizens. If they are willing with that in our Constitution to vote themselves in, this objection becomes a very trifling one.

But, I might go a little further back in history. In 1832 a strong effort was made, not only in Virginia but in Kentucky, to pass a law of gradual emancipation; and it came within eight votes of passing through the legislature of Virginia. Where was the valley then? Sir, inasmuch as the majority of the votes at that time were east of the Blue Ridge, almost every vote of the valley must have been cast in favor of that project.

But, sir, beyond all this, natural causes are working there—aye, sir, something that the word "natural" does not exactly reach: *Providential* causes are at work; and gentlemen should be willing to leave the result to Providence. To my mind, sir, there is nothing in the existence of that per cent of slave population. It cannot characterize the State one way or the other—alter its character, its pursuits, or its business. Agriculture it will be, it must be; and it can be nothing else. It can never be devoted to cotton or rice or sugar planting; and it must be an agricultural state; and we all know that where agriculture is the main business, that institution does not continue to flourish. Let it be, sir; it will die naturally. By the very fact that slave labor is not profitable in an agricultural country, it will diminish faster that any human laws can make it diminish. That is my view of the subject. And I would call gentlemen to remember the remarks of Mr. Clay, when they were speaking about dividing Texas into additional states. Western Texas was to be divided into three or four states and objection was made on that account. Mr. Clay, I think it was, told them Providence had already settled that matter; and that those states never could become slave-states.

Therefore, sir, if this objection is, as I view it, one that if trifling in its character, that can affect nothing, as it stands, and one that even if there is an evil in it is likely to cure itself, and that very readily, I hope in consideration of the numerous material interests that are involved in saving, as it were, for ourselves this great highway between the East and West, gentlemen will find their interests bound up with the bringing in of those counties into our new State.

And, now, sir, to come back: while there may be a propriety in the connection of the two sections, as the gentleman from Kanawha shows, inasmuch as they lie when thus circumstanced between these natural boundaries, yet, sir, this district becomes so extended when you unite the two as to stretch from the extreme north to the extreme southwest; and it is not to be readily supposed that there has been that intercourse between the people of the two extremities as to properly warrant us in connecting them in the same district. My view in regard to these districts is that we bring those together in each looking to their commercial relations, the formation of the country, and the direction of the watercourses—which last, I have already stated governs in everything. Looking to all these things, we group together counties according to what we suppose to be their commercial and business interests, those that have a common commercial center—if they have any —and who may be supposed to entertain nearly the same views and feelings with reference to their junction with the new State. We offer, then, sir, by the second resolution the counties of Craig, Giles, Bland, Tazewell, Wise, Buchanan, Lee and Scott, the opportunity to come in. They may accept or reject our offer; yet in either event we have a tolerable boundary. I say I would offer it to them more on their own account than from any particularly important benefit we may derive from it. Nevertheless, I think it would improve the boundary in that direction.

Well, sir, we offer it then to the other group—the counties embracing the Baltimore and Ohio Railroad in their northern border, and containing a population, in round numbers, of 86,000. We know more in reference to their affairs. Last spring, we know, from more than one of these counties delegates were sent here, and some were thrown into prison and prevented from coming. Hardy and Hampshire are represented here. Morgan had appointed delegates, but I do not know whether they have got here. But other information we can get all leads us to believe the Union feeling in these counties, whether in the majority or not, is yet very strong, and that they would probably choose to unite with us. Again, sir, when this question, of a division of the state has been talked of as long as I remember, the supposed line of division has always been the Blue Ridge. People's thoughts have never been turned to any other boundary, whenever a separation was spoken of. And now, sir, we have changed properly, I have no doubt, the boundary laid down by the ordinance of the convention authorizing this separation. Perhaps it will do some injustice to some of the counties excluded as well as to some that will be brought in. But people's minds have not had time to ripen on that subject. We so stated—warned the convention—in August, that there would not be time; that we were proposing something new; that amid the excitement of war it was not a proper time to take into consideration these things which affect their civil interests. But, sir, we are here for the purpose of doing something in reference to this matter. Those of us who opposed action at that time were overruled; and we are here now to carry out the behests of our constituents. But, now, sir, with an uncertainty about what would be the wishes of the people contained in these districts, seeing that if they should wish to join us it would be proper they should—but with an uncertainty, I say, is it not peculiarly proper—is it not peculiarly a duty which we owe them on account of our former connections in fellow citizenship, that we should at least offer to them—as I said in reference to the counties in the more southern part, the opportunity to join us, if they elect to do so? Sir, it can do no harm—it cannot affect any interest—if they refuse to come with us. If they refuse to take a vote even, it cannot.

And in reference to the difficulty about the legislature. I understand they have a resolution before them to adjourn the session in time to reassemble to take action upon the work of this Convention. That, sir, is the common sentiment: they can meet again, and will meet. And I do not suppose they wish this matter should be hurried through indecorously. A constitution cannot be made in a hurry; and when we pass from this boundary question, the institutions we are about to incorporate in our Constitution should be well canvassed and well debated here. I take great pleasure in saying I have been pleased, consequently, with the debates we have had. I have been instructed by them. The debates here have been, without I believe an exception, to the question on all occasions. There have been no speeches, that I heard, for "buncombe"; none that seemed to be made merely for the sake of making a speech; but every gentleman has addressed himself to the question: and, sir, such debate cannot be unprofitable. This comparison of ideas, that is what we are sent here for: to hear the views of each other and deliberate upon them, and come to some conclusion in which we can all coincide. It is not only ourselves that will be instructed; but information on these important subjects will be disseminated throughout the country. The members will go from here enlightened—as I confess I have been—and what they have thus gained will be distributed among their constituents. When this new State comes into existence under a Constitution thus made, our people, under the blessing of Providence, will be prepared to accept these provisions which shall have been adopted here, on the sincere conviction that they are the best we could devise for the new State. I trust therefore that not only this but all other questions will be fully canvassed. I am certain the legislature will coincide with us that this thing ought not to be hurried; and if it should require them to return at a future day, I have no doubt every member of that body will cheerfully do so.

I see nothing, sir, then in any of these objections. I see much that calls upon us to go at least as far as I have indicated to offer an opportunity to the districts of counties embraced in each of the tables that are before us. Certainly, sir, we owe that much to them. The very ignorance of their condition and of their views, in connection with the fact that they have always been spoken of as counties that would be likely to form a part of the new State, together with the fact that we have intimations from many of them that there are at least some people there who would be glad to unite with us, demands at our hands that this opportunity should be given to them.

THE PRESIDENT. The question is on the amendment of gentleman from Kanawha.

MR. LAMB. Mr. President, I merely desire to make a remark or two in explanation of the vote which I shall give in regard to this second resolution.

I must confess I do not feel much interest in the question whether that resolution is to be adopted or rejected; for whether it be adopted or rejected, it seems to me under the terms of this resolution you cannot have this territory connected with you, in all probability. We propose to submit to the people in Giles, in Craig, Tazewell and other counties the question of whether they will become part of us upon a vote to be taken on the third Thursday of April. Is there any probability, gentlemen, that at that time you will be able to obtain a full and fair expression of public sentiment on this subject there? Is there any probability that within the time that is here enacted you can procure a vote of the people of those counties ratifying your act and consenting to become a part of West Virginia? It is now winter—not a proper season for military operations. The vote in April will have to be taken before the armies can be moved, or at least before they are moving effectively. Nor is this a region of country, according to my ideas and information, in which there will be any important movement of armies for some time to come. But suppose it were the case: suppose a short time before April our armies had moved in and taken possession of the country: will the people of those counties with the sentiments which we know they entertain, with the prejudices which we know they are subject to, with the feelings which we know have been prevalent in that region of country —will they be prepared to come forward to the polls and say, We desire to join the people of western Virginia?

I do not think, therefore, that this resolution presents a practical question before this Convention; at least I fear not; for I do not think, whether this resolution is adopted or rejected by you, that you will have the people of those counties in the situation contemplated by the resolution capable of declaring their consent, within the time now fixed to become part of West Virginia.

The objection, then, which I have to the resolution is not a very important one, it is true; for I think it will lead to no practical effect one way or the other; but I do not think it is proper for this Convention, in this way to be soliciting time and again as we have done, the people of adjoining counties to express their sentiments and become part of the government which we propose to institute. Whenever we can have a fair and full expression of their sentiments on that subject, I would propose it to them. But my plan, I must confess, in regard to this matter would be to leave full power in the hands of the legislature of the new State to act hereafter when circumstances may authorize their action —when the fog is raised from the ground and you can see with some clearness the prospect that lies before you.

My objection to this resolution is pretty much the same objection to the action which was had by the convention in July. I think it is premature. We then proposed to different counties to take a vote in October. The convention was told that a full and fair expression of popular sentiment upon the subject around our borders at the time indicated was impossible. But they proposed it then; and your action, if you propose it now will be premature as was the action then.

THE PRESIDENT. The question was on the adoption of the amendment.

MR. BROWN of Kanawha. Mr. President, I wish to say a few words in reply to the gentleman last on the floor. Admitting now the propriety of the admission of these counties, if they choose to come in, he argues the impolicy of admitting them because they may possibly not have an opportunity of voting. Now that may be all true. Circumstances may be such when the vote comes to be taken that they cannot vote. If that happens, then they are in no worse position than he proposes to leave them in without the passage of this resolution; but if the circumstances should be so changed that they would have the privilege of voting, then, if we adopt this resolution we shall have secured it to them. On one side every chance is in our favor. On the other side, it may be possible there may be a failure. Certainly if we do not adopt this resolution we must fail in that respect—that is to bring them in. It seems to me therefore that wisdom and prudence decidedly are in favor of adopting the resolution and submitting the question to them; taking the chances of their voting or not voting.

It is argued again that they will not have the opportunity of voting; that because the enemy there is going into winter quarters, there may be no advance of the army in time to afford them relief. I might notice the remark of the gentleman from Hancock, that there was nothing over to this little Tennessee border of such importance as to require the advance of the Federal troops to remove the forces there. Why, has the gentleman forgotten that the Cumberland Gap is just at the tail of Lee and Scott and that this is the great military turning point in the western States and that which the Federal Government is making most gigantic efforts to secure, and which the Confederate States have already occupied in advance? It is now, sir, that we see the armies of the country gathering, like the doves to their nests, in the State of Kentucky, preparatory to an advance on this very spot, the great strategic military point in the western states, that cuts the Lynchburg and Tennessee Railroad, that great southern thoroughfare of trade and transportation, directly in two—that completely cuts the Confederacy in two. Why, sir, the very moment anything is done in the direction of Cumberland Gap, this whole country about which we are talking is relieved; and the same effect equally follows if General McClellan advances on Manassas, if that great Confederate army is driven back on Richmond and thence into North Carolina. That very moment this whole valley is cleared from Winchester to the Cumberland Gap; and every hostile force must immediately retreat or be hemmed in and cut off by the army that is advancing. So that if you advance at either point, if there is to be any forward movement by the armies of the nation, by which you expect to put down this rebellion, it will secure freedom to this people that they may vote and exercise the right of suffrage that we are proposing to give them. It seems to me, therefore, that the arguments here by the gentleman from Hancock, are not well considered. But, sir, if these armies are to meet with disaster; if instead of advancing on Richmond they are to be driven back on Washington, and, as Letcher says in his message, on the Susquehanna; if instead of taking the Cumberland Gap and holding it you are to be driven back to the Ohio river and Louisville is to be captured: then, indeed, I fear our whole State will go by the board. I do not, however, contemplate any such a state of facts, in submitting this Constitution to the people of these counties.

But another objection of my friend from Hancock was his opposition to this tier of counties embracing Craig, and Tazewell, that seemed to be particularly offensive in his sight because there were negroes there. I understand from his remarks that he had no objection to the other tier of counties. That tier I understand he is willing to admit—willing to submit the vote to this people, to say whether they will join in this movement or not. Now, sir, if we look at it on the score of negroes, in the first tier of counties there are 4,813 slaves, and in the other which he is ready to admit there are 12,831: nearly three times the number in the portion he proposes to admit than in that which he proposes to exclude, upon the ground, I understand, that they have negroes in them. A very strange argument and conclusion, it seems to me, sir. Now, sir, I confess I have no apprehension of these negroes in either district. That much the larger majority is here or there does not affect me. I have no apprehension for these few negroes anywhere in the territory of West Virginia. As the gentleman from Wood has said, the existence of eight per cent slave element in our white population is nothing. West Virginia is a white country; and the few slaves scattered within its borders cannot have any effect or control. They never have had, as has been shown. In all the efforts we have made to extend the white basis, these people have never flinched. They have stood shoulder to shoulder by Brooke and Hancock; and it is only there that we find the only county in the State of Virginia that has not within it a negro, free or slave.

There is another consideration that strikes me, in addition to those urged by the gentleman from Wood. There is East Tennessee, a Union-loving and homogeneous people, precisely as our own all along that Tennessee valley. If the Union is to be preserved their only outlet to the Capital of the country is through that very valley. They have struggled their resources until they have made the Tennessee Railroad. There is but a small gap from where that turns to the right through the Blue Ridge and comes down to Lynchburg to connect them with the valley and give them a continuous line from Tennessee to the Maryland line, with the Blue Ridge on one side and this intermediate range of mountains that splits the valley in two on the left.

Now, why should not these people look to their interests in the extension of these internal improvements on to Richmond or Norfolk, or to Baltimore, the great emporium for this whole country, where they have been seeking an outlet but have never been able to obtain it, because Richmond and Norfolk and the lower seaboard have ever stood in their way, and will still stand in their way.

I believe now, sir, the people of the valley would vote against a division of the state; yet when they find a division of the state is a fixed fact and they have to choose which part they will join, they will come over with us. It presents the question in a very different light to their minds. They have all that natural attachment to the state—for Virginians have ever regarded the State of Virginia in the light of a nation; but they will vote on it when you have settled the question by a vote of the people that it is to be decided, and they have to decide for themselves which part they will join. They will stand hereafter as they have ever stood heretofore, with their brethren with whom they are allied in interest and feeling. The question, then, is: shall we submit it to their suffrages to say on this question what are their preferences?

Another thing: in the county of Kanawha, I think the largest number of the settlers are from the county of Russell, away down there in the corner of the State next to Tennessee. They naturally tend right down the New river valley. Why, then, shall we cut loose from this tier of counties? All I ask is that the people of these eleven counties shall have an opportunity to vote for themselves whether they will cast their fortunes with us. I do not wish to have them forced in here. That is all I ask and all I desire to secure by this amendment; and it seems to me the opportunity to act cannot with justice be denied by this Convention.

MR. LAMB. One word of explanation merely. The argument which I addressed to the Convention was not an argument against the object which the gentleman desires, at all. It was that the resolutions which are now pending before the Convention will not accomplish that object, in all probability; that the only practicable method of accomplishing that object that I saw will be put your new State in operation; put the legislature of the new State in operation, and invest it with full authority to arrange for acquiring new territory hereafter if it may be desirable. They will have all the light which coming events will throw on that question; they will act under different circumstances from those upon which the Convention is now called upon to act.

MR. BROWN of Kanawha. Then, sir, I desire to know: suppose the people desire to come, and supposing the new State is ready to receive them, are we to obtain the consent of the old state?

MR. LAMB. An explanation on that question would necessarily lead me to occupy much more time than I had intended; but I have no objection to explain my views on that question also.

As soon as you have instituted your new State, whether the rebellion will have been put down or not by that time, it may be absolutely necessary for the Government of the United States—it may be absolutely necessary, as a mere military question—that a loyal government should be instituted in eastern Virginia: a loyal government there representing the loyal citizens, the men who are true to the Union—and we can recognize no other as the governing power in either eastern or western Virginia; the Constitution and the Government of the United States recognizes no other as the governing power than the loyal people of the states—a loyal government established there undoubtedly will be willing to make any arrangement which may be proper. A loyal government originally instituted would include these counties of Hampshire and Hardy along the border—any of the counties in which a loyal element prevails. They would include such counties as were protected by the armies of the United States and in which the people would have an opportunity of expressing their sentiments freely and independently upon any question should they see proper. Then if they wish to join us the matter may be fairly presented and can be fairly decided—not by the parties on one side only—but by both parties. But however this may be I must say the proposition in this resolution will not lead to any practical results. It does not accomplish the gentleman's objects, as well as I can see into what is to succeed; for I do not think that there is any probability scarcely that by April you would be able to obtain a vote of the people within those counties to annex themselves to the new State. They have been set in a particular direction. Their prejudices all lie in a particular direction; and if these secession armies were all cleared out of their territory this day, it would be months, perhaps longer, before a proposition to annex themselves to this new State—if it becomes a State—could even get a hearing among that people.

MR. WILLEY. I desire, sir, before the vote is taken upon this question to make a simple statement of the ground which shall influence me in casting it.

I accord entirely with the gentleman from Ohio who was last on the floor, in his views of the utter impracticability of getting an expression of the sense of this section—table B, I believe it is—before or at the time prescribed in the resolution. I have no idea, sir, that that section of the State will be relieved from the presence of the Confederate military power by that time. The same hindrances and influences which have prevented access to them hitherto will remain until that time I have no doubt. And, sir, I have as little doubt that if all these hindrances were removed and they were at perfect liberty to go to the polls and express their opinions—I have as little doubt that they would vote to stay out by an overwhelming majority—as I have that they will not be permitted to vote at all. Therefore, sir, what is the use of making a proposition to them? If they are necessary to us, let us carry out the principle adopted by this Convention and not ask them to "come in, if you please," but say we have a right to take them in whether they want to come in or not. If they are necessary let us survey them off and include them in our farm. That is the principle established by this Convention; and why not apply it to the people of that section as well as to the people of another section?

But, then, sir, the crowning point I rose to mention was this: if we propose to allow them to come in and they shall not have had an opportunity to come in, and in the meantime we present a state with boundaries including them to Congress asking for admission into the Union, what will that body say? Will they not say: you have acted prematurely? Will they say that you are pressing a little state into the Union that does not contain the boundaries that you by your previous action had enacted as the proper boundaries for this State to include? Sir, I feel myself entirely hampered in expressing my opinions on these questions, lest the opinions I might express here might be quoted in judgment against me in another body. But this I know—and I don't care whether the reporter hears it or not—I would as soon he would not—this I do know—I do not care about its going out of this body—I would prefer it should not—that we are going to have difficulties enough to encounter in Congress to get our State admitted without giving them any other pretext for rejecting us than those that are real and specific. Let it not be quoted as an objection to our admission, that we are acting prematurely and desire to establish a state which does not embrace the boundaries we believe to be necessary for our convenience as a state; as it will be if we go to Congress with our application before these people we propose to extend the privilege to shall have had an opportunity of exercising it. I would prefer seeing them left out entirely. If I believed they wished to come in I would like to see them in; but, sir, you have but to look at the map to see that they do not; for, sir, I must differ with friends from Kanawha and Wood who previously addressed the Convention in regard to the natural connections and the identity of industrial interests and relations between that section of the country and this State. Sir, look how far they lie along and border this Tennessee railroad. Their interests and connections lead them in the direction it leads; and, in my humble estimation they will never desire to be taxed to make long lines of improvements through mountain barriers to get to distant markets when by short lateral works they can connect themselves with the Tennessee railroad, with the seaboard and with all eastern Virginia besides. I do not consider that their industry, mercantile interests and social institutions are identified with ours at all. In feeling they are adverse to us; and so far as my experience goes, I know they are averse to all connection with us. I know that members in the late convention at Richmond from these counties were the bitterest persecutors of northern loyalty in all the State of Virginia.

Therefore it is that I would rather see this measure left out of the question altogether. It is true it would do no harm to allow them to vote except it may be to embarrass our success in Congress by giving an intimation to Congress that we are absolutely pressing upon them a state which does not contain as much territory as we, giving evidence by our course here deem proper to contain in the new State. Therefore, upon the question of expediency, I shall be compelled to vote against including the counties in table B.

MR. PAXTON. Mr. President, amongst the many reasons given here by other gentlemen for the vote they expect to give on this question, there are two—without recurring to the others many of which have an influence over me—that of themselves are paramount with me and either of which would influence my vote. I shall state them very briefly. The first is that I believe—and I will not detain the Convention to give my reason for that opinion—that the adoption of the report of this committee will embarrass, retard, and in all likelihood will defeat this whole new state project. For that reason I shall vote against it.

THE PRESIDENT. The Chair would call the gentleman's attention to the fact that the question will not be on the report of the committee but on the amendment.

MR. PAXTON. Very well, sir; but I shall vote against the amendment and the amended resolution, if the amendment prevails, for one and the same reason.

The other reason is that I really do not desire to have these counties connected with us in this new state movement, even though they would express a disposition to come with us. I am sincerely anxious for the success of this movement. I have been a new state man from the beginning; and I think if we are to be successful, that it is highly important we should have a State the counties and people of which possess a unity of interest; a State within the borders of which the people are homogeneous. I do not believe we can have that, sir, by including these counties within our bounds. I shall therefore vote against the amendment and against the resolution itself when it comes up.

MR. STUART of Doddridge. Just one moment. I presume the gentleman does not know the special amendment of the gentleman from Kanawha is merely to include these counties in the first resolution.

THE PRESIDENT. I think I understood the gentleman as changing that.

MR. STUART of Doddridge. The object of the gentleman is this: that if this Convention sees cause to vote against the resolution embracing the counties of Giles, Craig, etc., he will feel compelled to vote against the other resolution, from the fact that he does not think it would be doing justice to all sections of country. I desire the Convention to understand that fact; that if we vote against the amendment of the gentleman from Kanawha, and the question comes up on the first resolution, upon giving these counties of Giles, Craig, etc., an opportunity of expressing their opinion, and the Convention in voting on that question votes against giving them this opportunity, then the gentleman from Kanawha, with his friends, will vote against the introduction of the other class of counties. He wants to embrace them altogether, so that we shall include all or reject all; but at the same time permitting them to vote in sections. As the gentleman modified his amendment to suit my views, I will vote for it; and I think those favorable to this arrangement ought to do likewise, because it gives us all or none.

Just one moment more. The gentleman from Monongalia objects to giving this class of counties an opportunity of voting themselves into the new State in any form because he thinks it will embarrass the action of the new state men before Congress, and that we are holding out inducements to make them believe we do not embrace the boundaries we ought to have. We have *now* embraced the boundaries which we undoubtedly should have; and for the sake of humanity we offer these other sections of the country an opportunity to come in if they want to. We say now, our future boundaries outside should be influenced and controlled by the will and wish of the people living outside; and if they want to come in, there should be the boundary; and if they do not our boundary should be just as it is. It certainly would not embarrass us.

MR. BROWN of Kanawha. One word in reply to the gentleman from Monongalia. It is this: instead of these additional counties jeopardizing the prospect of success in Congress, it seems to me, if we look at the manifestations that have gone forth from Washington, the larger the territory the more confidently may we look for admission. We see in the—

MR. WILLEY. If the gentleman will allow me: I say if they would come in, let them come; but I concur with the gentleman from Ohio in the perfect impracticability of getting their vote. Hence we would go to Congress after all without their territory; and it would be construed against us.

MR. BROWN of Kanawha. If we do not go there with this proposition to submit to them, we certainly will not get them. If we give them an opportunity, it is certainly prejudging the case, to say they will not vote.

But, as I was alluding to the fact, the administration has given forth that West Virginia is naturally, and with their approbation from the Blue Ridge to the Ohio river; and, therefore, when you look at that fact in connection with our success in Congress, the probabilities are highly in favor of our success by enlarging rather than diminishing our territory. The only way you can enlarge it is by giving these people the opportunity of adding their counties to it.

MR. BATTELLE. I was going to say simply that that is just what struck my mind—the inquiry made by the gentleman from Monongalia: if the principle acted on already is a correct one, and we have a right to go around and take what we please, why do not we do it at once? Why this difference in the second and third resolution? Why distinct from the first? Why have one principle in one case and another in another? If we have the power, as seems to have been argued all day on Saturday—and which was established as a principle by the action of the Convention, as I understand it—why not practice upon it now? If we have got the power, why not leave this matter with the body with whom the Constitution of the United States, the authoritative source of power in this case, at least, leaves it—the legislature of the state and the Congress of the United States? And that brings me to this point to which my own mind has been settling down, in spite of the views of some gentlemen here whose opinions I have been accustomed to regard with very great deference, to the conviction that we have been engaged these six days on a question which we have not legitimately before us, which the people did not send us here to settle, and which we have no power to settle because the Constitution of the United States—the authority in the case—expressly declares that that power of regulating boundary is with the legislature of the state and the Congress of the United States.

These are my views, sir, in reference to that matter; that any action we can take here, we all agree, must be merely recommendatory. It is, in truth, a departure from the intent of those who sent us here—who sent us here to make a Constitution for the counties embraced in the ordinance for division upon which they voted; but of course with a proviso that where there were counties outside of the line whose action had been so clear and well defined as to make no dispute they should come in. Yet the question of boundary, as a distinct question, was no part of the purpose for which we here assembled; and I am more and more of opinion that we are embarrassing the new state movement. We embarrass the creation of a new State; and I am just as clear that we will embarrass the new State after it is created. Some gentlemen tell us here they want no distracting element introduced into our deliberations. Do they reflect that they themselves, all unwittingly it may be—and I will give them credit for so acting—are by pressing this measure, introducing an inevitable element of distraction.

But there is another remark I wish to make not bearing particularly on the amendment. I am following the course pursued by every one who has spoken. It strikes me that these resolutions, by the condition they contain—though I wish particularly to say not I believe so intended—do contain a delusion and a snare. They tell us: "provided a majority of the votes cast within the said district * * * are in favor of the adoption of the Constitution," and so on. Well, now, it is perfectly obvious to every gentleman that in reference to the second resolution, or in reference to the third—or, if the gentleman's amendment obtains, in reference to all of them—it is perfectly competent for one hundred men in these twenty counties to decide this whole question. What is easier than, if a poll be opened, for a few dozen to go to one poll and vote; and in the absence of any other voters they decide the whole question. A few dozen may go to another poll, in the same way; and so on throughout the whole district. And that, it seems very likely to me, might be the case, sir. I cannot say of course that it is likely one hundred men might decide it; but still it is possible. What is the state of the fact? The secessionists within these bounds—and, by the way, notwithstanding all the declarations to the contrary by the gentleman from Kanawha, yet in this secession business they have been to a man against us—except away down there on the railroad: I believe all the delegates from the valley and, sir, all these counties voted for secession, and their people since then have been and today are for secession.

But as I was going on to say, you may tender to these secessionists an opportunity to vote, but what will be their answer? They will not recognize your government, as my colleague says, for they call it a "bogus government." They will not recognize it by voting. Suppose the State of Ohio should give the people of Ohio and Marshall counties an opportunity of voting whether they would go into Ohio or not—I should not go to the polls at all. I would not recognize the validity of the act even by going to the polls to vote against it. Well, now, the whole history of this case shows that these secessionists feel just that way in reference to your new state movement. They will not vote at all. What is the result? Why a few Union men—patriots though they may be and may have been—suffering Union men though they may be—and you may say every other good thing of them you please and I will endorse it—the trouble is there cannot be enough of them—but it is possible, I repeat that one hundred in this whole district may decide this whole question.

Am I not right, then, in saying that this condition, plausible as it appears—and I again especially disclaim any imputations on gentlemen—is a delusion and snare? I beseech you, gentlemen, trust not to it!

I expect to vote against the amendment of the gentleman from Kanawha. I shall then vote for the amendment suggested by the gentleman from Taylor, if it is proposed, instead of "votes cast" insert "qualified voters," or something equivalent to it, with the desire to make the proposition as acceptable to myself as possible with the expectation, however, of voting against the whole business (Laughter); for I do not want those people in.

MR. POMEROY. I would suggest, the gentleman from Kanawha certainly misunderstood me. I did not indicate how I would vote. I did indicate very clearly that I would vote against putting the two together so that they had to stand or fall together. I indicated that clearly; but that was what I wished to convey: that I did not wish to group them together, to unite them; and I am really astonished at my friend from Doddridge taking the view he now does that there is an important point to be gained by putting them together. The two stand on entirely different bases, I think; and therefore while I did not indicate that I should vote for either of the districts without some amendments, I wanted it to be understood that I was opposed to bringing both districts in together. And I do hope the Convention will now, before we adjourn, take the vote upon this, as the whole merits of the question will come up, after this is voted on, upon the motion to adopt section B.

THE PRESIDENT. The question is on the adoption of the amendment.

MR. STEVENSON of Wood. I call for the yeas and nays.

The yeas and nays were ordered and taken; and resulted:

YEAS—Messrs. Hall of Mason (President), Brown of Kanawha, Brumfield, Chapman, Carskadon, Dolly, Hall of Marion, Ruffner, Stuart of Doddridge, Walker—10.

NAYS—Messrs. Brown of Preston, Battelle, Caldwell, Cassady, Dering, Dille, Hansley, Haymond, Harrison, Hubbs, Hervey, Hagar, Irvine, Lamb, Lauck, Montague, Mahon, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Taylor, Trainer, Van Winkle, Willey, Warder, Wilson—35.

So the amendment was rejected.

MR. POWELL. Mr. President, I now move we adjourn.

MR. LAMB. I hope we may be able to dispose of this resolution first.

MR. POWELL. I think there are to be some amendments proposed, and that we had better adjourn.

MR. LAMB. I would like to stay here and vote on it.

MR. POWELL. There are other amendments to be offered, I think.

The question was put; the motion was agreed to; and the Convention adjourned.

XII. TUESDAY, DECEMBER 10, 1861.

Prayer by Rev. G. W. Collier, Chaplain of 34th Ohio regiment.

Minutes read and approved.

THE PRESIDENT. When the Convention adjourned last evening it had under consideration the report of the Committee on Boundary, and the question was on the adoption of the second resolution. Is there any motion to amend? The gentleman from Taylor having intimated his purpose to offer an amendment is entitled to the floor.

MR. SINSEL. Mr. President, I propose to strike out the words, "votes cast," in the 15th line, and insert instead "qualified voters." The object of this amendment is, that all the territory of districts lying east of the Allegheny mountains, if they come into the new State, shall come by a majority of the voters residing within the district, and not by a majority of the votes cast.

As was remarked here yesterday by the gentleman from Ohio, one hundred votes in any of these districts would make the district a part of the new State by a few dozen acting in one county and a few dozen in another, and none others. In that way a whole district, we might say the whole Valley of Virginia—might be brought into this new State contrary to their will and wish; and I am in favor if we go to the Blue Ridge of mountains that we have a willing people—a people not opposed to this movement. For that reason I offer the amendment.

MR. STUART of Doddridge. Mr. President—

MR. WILLEY. With the leave of the gentleman from Doddridge, I desire to have a correct understanding of the effect of the amendment, if adopted. The clause reads at present: "provided a majority of the votes cast within the said district at elections to be held, etc." I do not see, sir, unless there are other modifications of the phraseology that the clause would be altered in its effect at all. "A majority of the qualified voters" * * * "at elections to be held"—must that not mean votes cast? Or does it mean "a majority of the qualified voters" *as ascertained* "at elections to be held?" I merely desire to understand.

THE PRESIDENT. The amendment alone, in the opinion of the Chair, would not effect the gentleman's purpose entirely; but he may follow it up with other amendments, perhaps, which would put the thing in form.

MR. STUART of Doddridge. I was aware the amendment as proposed by the gentleman from Taylor would not carry out the view he desires, and I presume it cannot be made so as to embrace the object desired by the gentleman.

I was just going to remark, Mr. President, I am compelled again to oppose the amendment, or rather the purpose indicated by the gentleman from Taylor: not that I would oppose the insertion of the words he proposes, because it would not change the effect of the resolution a particle; but the gentleman's argument indicated what his purpose was, and that was that a majority of the qualified voters living within the boundaries of this district should be necessary to be cast in favor of coming into the new State before they should be received.

Mr. President, in considering these resolutions, I must be permitted to say that I have no selfish motive, nor can I impute such a one to any member of this Convention. But I must be permitted to say, as the gentleman from Ohio last evening said, without impugning the motives of any member of this Convention—it would be much fairer to come up here now, fairly and squarely, and say that you do not want these people. It does seem to me that would be the fairer way. We could then understand you fully—where to meet you without attempting to avoid the issue by a dodge of this kind. Now, sir, it is virtually saying to these people that "You shall not come in." And you are saying that you don't want them to come in. Now, that is certainly a fair construction of the propositions and arguments of gentlemen. The ordinance that submitted the question to the thirty-nine counties —and counties lying contiguous—last July, submitted the question to the people within these boundaries; and a majority of the votes cast governed the action in this matter.

Now, sir, supposing the suggestion of the gentleman from Taylor, and the idea indicated by the gentleman from Ohio last evening, had been carried out in our last convention, where would we be today? We would not be endorsed here by a majority of the qualified voters of the thirty-nine counties, would we? And is not the very identical principle that is indicated in the resolution here reported by this committee sustained and vindicated by the action of the July (or June) convention last summer, which the gentleman seems to look to as such strong authority in the premises? Now, sir, this committee was governed by the same views and principles as the convention last summer: that a majority of the votes cast should govern this matter and not that it would require a majority of the qualified voters living within the district. Because under the circumstances last summer, we knew we could not get a majority of the legally qualified voters, even of the thirty-nine counties, to the polls. And at this late period of time, I must be permitted to say, even the gentleman from the county of Taylor is not endorsed by a majority of the qualified voters of the little county of Taylor, right within gunshot of the capital. Now, sir, is it not saying—when you could not get a majority of the voters of your own county—with all the protection that could be possibly thrown around them could not get them to the polls to vote—it is not virtually saying to these people who are under greater disadvantages and have a great many more obstructions in their way —"Unless you rally your people and get a majority of the qualified voters of your district to the polls, you shall not be admitted, you cannot get in." How is the number of "qualified voters" to be ascertained? I should like to ask the gentleman. I believe that the law, the statute, of Virginia requires that the commissioners of the revenue, should return to the clerk's office a list of the legal voters in their districts. That list was made up, I presume, sometime prior to the breaking out of the rebellion. Well, sir, I hold that a majority of those people that were then listed as qualified voters are in the rebel army or in the Union army. They are either in the rebel forces or in the Union army, or have been driven from their counties. Then, sir, you find these very counties to whom we desire to submit this question left without a majority of qualified voters in the district. Now, it seems to me, it is a mere sham—it is a mockery—to say to these people that "you must bring a majority of your voters to the polls before we will consider your propositions or consult your wishes." How are you going to reach them? I understand, Mr. President, if I have been correctly informed—that a large portion of this community embraced in these districts have been forced, under the militia law of Virginia into the service of the rebel Confederate States, against their will and against their consent—that they necessarily were compelled and forced into the service. We have assurance that this is the situation of many citizens of these counties; and for self-defense and self-protection many of the Union men of these counties have had to flee from their counties or take to arms.

And I now appeal to the gentleman, how is he going to get a majority of these people to the polls?

Then, sir, it does seem to me, in this view of the case—it does hold out the idea—that the gentleman who advocated this amendment, or seeks to engraft it upon this resolution, is only trying to dodge the question; and that it would be much fairer to come out and say: "We do not want them at all." Now, that is the truth, gentlemen, take it home among yourselves. You do not want this country; and now if you can evade it in any possible way, without a plain vote of censure upon the committee, you desire to do so. If I understand upon the first resolution receiving into the boundaries of the new State the counties of Pocahontas, Greenbrier, Monroe, Mercer and McDowell, you conclude it was rather against you and, now, unless you can get round this vote in some way, by some dodge or crook, why these people will have the privilege, at least, of voting on the question; and if they should vote I am satisfied the majority of the people who get to the polls and have an opportunity of expressing their sentiments on the question whether they want to identify themselves with West Virginia or whether they desire to be attached and allied to eastern Virginia, which has been oppressing this people, legislating against their interests for years and years, that they will come out almost *en masse* for the new State.

Now, Mr. President, to show you—and it needs but to look at the figures to satisfy the mind of every member—that even a majority of the people within the district composed of the thirty-nine counties have never come to the polls and expressed their sentiments in favor of a new State. In a voting population of some 40,000 or 50,000 we see a poll of only 17,627—and even some of them were in the army.

Now, sir, as I before remarked, if you had required the same at the hands of these people, who have all the advantages and have been cleared of the rebel armies—if you could not get a majority of them to come to the polls and vote, how is it possible that these other people can get to the polls under the circumstances I have indicated. Why, there are many of our counties here that have not been able to get to the polls at all; and there is scarcely a county, Mr. President, within the boundaries of the thirty-nine that has cast a majority of their legally qualified votes in favor of the adoption of the State and of the new State. There is scarcely a county. Now, sirs, for illustration one moment. The county of

Doddridge which I represent—I expect if there is a Union county in the State of Virginia, it is the county of Doddridge. We have not one man that has ever gone into the rebel service—not one man that has ever left the county of Doddridge; and they have been unable in Richmond to get a man to represent that county. There is not another, perhaps in the state that can say this much. Well, even saying this, sir—with this Union sentiment—with the Union forces in our midst, armed to protect us, it was impossible even to get a majority of this people (the qualified voters) to the polls to endorse the action in favor of the new State. And why? It is on account of some secessionists. They would say to their neighbors they did not desire to see a large vote cast. They wanted to see this impediment thrown in our way. "The question will be carried anyhow. They will adopt the new State. If you go there and endorse it, and the southern cause prevails, you will place yourself in an unenviable position; and you had better stay at home and be quiet." Now, this is the sentiment of hundreds of even Union men, all looking to their interests; and the men who take an active part in this measure—who desire the people to endorse the action of the new State—could not get a majority of the people to the polls, although they were willing to be governed and controlled and ruled by those who did take an active part and who went to the polls and voted on the question. But, sirs, if we had been left with this—as the gentleman from Ohio last evening termed it—deception, I believe, and delusion—

MR. BATTELLE. No, sir, "snare."

MR. STUART of Doddridge. A snare and a delusion—

MR. BATTELLE. Not quite; "a delusion and a snare."

MR. STUART of Doddridge. "A delusion and a snare"—now we have it (Merriment). Well, sir, the gentleman said he did not impugn the motives of any member of this committee; but I must say we only followed out the principles and plan of the convention which he seems to look to and recognize as authority in this body; and that if we submitted a plan here, in that resolution which is "a delusion and a snare," the body whom he recognizes as authority, ruling and controlling his action here, submitted a question to the people last October which operated as "a delusion and a snare," because they were not endorsed by a majority of the voting population of the district.

Now, Mr. President, the only question at issue at present is, will the Convention adopt the amendment of the gentleman from Taylor, and thus require—for although the words of the amendment do not embrace it I suppose they will be made to embrace it; because that is the object and intention—require a majority of the legally qualified voters living within the district to endorse the action in favor of the new State, or not; and it is not necessary to run into any other questions. The whole question upon the main resolution has been argued over and over again; and every amendment that has been proposed here—every possible amendment that has been offered—has led to the result of arguing this main question, the right of the Convention to include other territory. I do not propose to go into a discussion of that question; for it is not involved in the question now before this body.

MR. SINSEL. In order to make this more definite, I move to insert in line 17 before "and" the words "is cast in favor of." The whole provision then will read thus:

"RESOLVED, That the district comprising the counties of Craig, Giles, Bland, Tazewell, Russell, Lee, Scott, Buchanan and Wise, shall be included in, and constitute part of the new State provided a majority of the qualified voters within the said district, at elections to be held for the purpose on the third Thursday of April, in the year 1862, is cast in favor of, and a majority of the said counties are in favor of, the adoption of the Constitution to be submitted by this Convention."

Now, Mr. President, in answer to the gentleman from Doddridge: He says I stand here not represented by a majority of my constituents in Taylor. That is true. The county only cast about 508 votes on this division question; but at the same time it will be recollected that there were two volunteer companies from that county in the service at Cheat Mountain, and in addition to that some 300 voters away with teams hauling for the Government; so that it was impossible to have a full vote under such circumstances. Had they been at home, instead of standing here representing a county giving 500 majority for a division of the state, it would be 700, 800, or 900 at least. The persons engaged for the Government would have voted on this question. The secessionists did not vote; nor will they vote on this until our national troubles are ended. That is their fixed purpose in that county; at least, they say so.

Well, then, in addition to that the county of Taylor is represented on this floor. They have a representative here. They can be heard through him. These valley counties are not represented here. If not represented here should not they, at least, in the adoption of this Constitution have the expression of a majority of the inhabitants residing within the district? Surely they ought.

MR. BATTELLE. Mr. President, allow me just one word. It is an old adage and a very true one, that those who live in glass houses ought not to throw stones. My very good friend from Doddridge charges the amendment of the gentleman from Taylor with being "a dodge"; and he repeats that charge in various forms, several times. I must think, sir, if there is any "dodge" it is all on the other side (Merriment) and I tried so to show last night. I tried to show then that the effect of the resolution—though I disclaimed imputing any such intention to the committee—is to put it in the power of say one hundred men—or even a less number—to decide the whole destiny of the action upon the proposition of this Convention in these twenty counties. Is there no "dodge" in that, sir? The effect of the amendment of the gentleman from Taylor is to avoid that contingency—to enable a fair election to be held. Its object is apparent to everybody. There is no deception in the case. It is to relieve this proposition, as it now stands, not only from the appearance but from the fact of being a delusion, so far as the question of the election is concerned, or so far as the principle is concerned. If the gentleman urges that the election cannot be held at this time or within a reasonable time hereafter he must see, it seems to me, that this is not an objection against the amendment but an objection to the whole proposition presented now to take in these counties. I repeat the expression of what I said last night, that in my humble judgment we are embarrassing this whole question at every step and every stage by attempting this extensive grasp at additional territory. The convention of August did provide that in an exigency certain counties might be included; yet it was evidently in the contemplation of the convention that so popular would be this movement and so desirous would those counties be to come in on as plain a plan as the simple seeking of these counties to come in, that this body was not to be so hampered but that it might let them in. Instead of that it is to be said that there is not—always except Berkeley, Hampshire and Hardy—not even the intimation of an authorized expression of individual opinion of their desire to come in.

MR. CALDWELL. Mr. President, to relieve the gentleman from Ohio and some others who seem to be opposed to making any of the counties named in the second resolution a part of the new State, from the charge of endeavoring to effect this purpose by way of a "dodge," I will move this proposition, sir: that all after the word "Resolved" in the resolution be stricken out.

I am free to say, sir, and I take occasion to say it now, that I am one of the members of this Convention who feel disposed to say that these counties shall not only not form a part of the new State, but that it is idle even to submit the question to them. I am opposed, sir, utterly opposed to taking into view the propriety of even submitting the question to these several counties. I do not design to argue this question at all. The reasons for saying this much to this people have been forcibly and well put by other members on last evening. I do not design to detain the Convention one moment longer. My proposition is, sir—and I think it is in order—that all in the resolution after the word *"Resolved"* be stricken out.

MR. WILLEY. I do not propose to indicate at present the vote I shall feel constrained to give finally upon this proposition; but I would submit to my friend from Marshall whether the resolution ought not to be perfected as well as the friends of it can make it, before a proposition so fundamental in its character as that made by him just now, is submitted to the Convention. That strikes at the possibility of amending it—strikes at the foundation of the matter; and brings up the fundamental question whether we shall admit them under any circumstances, not on conditions. He at once brings up the debate, which I think has hardly been exhausted yet, in reference to these counties, whether they shall be at all admitted; for I hold that the proposition to admit these counties under proper rules and with proper restrictions stands upon very different reasons and grounds from the propositions that we have heretofore been considering for the admission of other counties; and I would be glad if it would suit the views of my friend from Marshall to withdraw his motion for the present until we can vote on this other proposition of amendment to it; and when it is made as acceptable as the friends of the resolution can get it made, that then he can make his proposition to bring up the main question on the admission of these counties, in any form he desires.

MR. CALDWELL. My object was not to embarrass this question, but it was just the contrary. We have had a great deal of discussion; and I think the members have made up their minds conclusively on the subject; and it was for that reason, and to keep off that debate that I made the proposition. I do not wish to deprive gentlemen of an opportunity of perfecting their resolution; and I am inclined now, so long as it is urged that opportunity is wanted to perfect the resolution, to withdraw my amendment for the present.

MR. WILLEY. A word, then, on the amendment. I think, sir, its principle has been stated in our deliberations when it was said that we are representing the loyal portion of the citizens of Virginia. We have been proceeding upon the understanding that the loyal citizens of this Commonwealth are the people of Virginia, to be recognized in our present capacity, or in any other public, political, or legislative capacity. If that be a true principle, sir —and I have not heard it denied—what will be the effect of the adoption of the proposition of the gentleman from Taylor? It is a matter of doubt, perhaps, whether there are not a majority of secessionists in the counties proposed in the resolution. Adopt the amendment and then it will not be a majority of the citizens of Virginia, but the loyal citizens of Virginia, or the true people of Virginia, that we recognize as having a right to be heard here. It will in fact be availing ourselves of the opposition of the secessionists whom we do not recognize as having any voice or authority in our deliberations. Will it not be so, sir? The proposition of the amendment is "a majority of the qualified voters" in the whole district. Now, sir, secessionists are qualified voters under the Constitution and under the laws; and in order to make our action of use to those who may desire the admission of these counties into our new State—to make it possible to obtain them we shall have to include all the Union votes—every one of them perhaps in the district—and a considerable portion of the secessionists. It that fair, sir? Is that consistent with the principles upon which we have been proceeding in our deliberations hitherto? Does this body represent the voice and the will of the secessionists in these counties or even within the limits of the thirty-nine counties? I think not, sir. It seems to me that it is an unfair proposition; that it will operate unfairly and unjustly upon the true and loyal people of Virginia.

Again, sir, it has been argued here that it might so happen that a hundred men could bring all the Valley of Virginia within the boundaries of the new State. That is an extreme case. There is a bare, abstract possibility that such an occurrence could take place. But, then, sir, it is well known that our action here in the premises, so far as these counties are concerned, and so far as our whole action is concerned, is to be under the control and supervision, and action of the legislature; and when the matter comes before the legislature for its assent to the new State and to prepare its action for presentation to Congress that the assent of Congress may be obtained, that body can take into consideration all the circumstances; and if it should appear before the legislature that there was not a fair expression of the real sentiment within the limits of the counties proposed to be embraced, I have confidence enough in that body to suppose they would decline to include them. But, sir, if we are to make a proposition to those counties at all, I object to making it to any other than the loyal men in those counties—the true people of Virginia. That is my proposition and hence I am opposed to the amendment of the gentleman from Taylor, because it would give them the benefit of the united secessionist vote; and I hope my friend is not willing to avail himself of aid and comfort in any such quarters.

MR. VAN WINKLE. The gentleman from Doddridge and the gentleman from Monongalia have said pretty much what I had to say in reference to this proposed amendment; but it may do no harm, sir, to restate it in a different connection.

The object of the amendment proposed by the gentleman from Taylor, if offered in good faith, is certainly a good one. That object I understand to be, to have a full expression of the views of the people of those counties. And, sir, if a mode can be devised which will effect that purpose and be free from gross objections, I certainly should be inclined to favor it. But, sir, I think as the amendment now stands it is both impracticable and unjust. In the first place, I know no way by which under present circumstances the number of voters in any of these counties can be ascertained. If it was possible to send out commissioners to go round through these counties and ascertain the number of voters in ordinary times, it would seem to be impracticable at this time; and we cannot count with certainty on being able to take any such step before the election. I think, sir, therefore, it is impracticable. We do not know the number of legal voters in these counties and have no opportunity of ascertaining them. But, sir, supposing it could be ascertained, what would be the effect? In the first place there will undoubtedly be some secessionists in each of the counties. Now, they deny the authority of the Wheeling government. They deny that a legal election can be held under the authority of this government. They will, therefore decline to vote, if they do not choose to vote against it; but they will simply decline to vote. Every vote, then, that fails to be cast is equivalent to a vote against this proposition. Then, sir, there will be some good Union men favorable to these counties coming in, who will be sick on the day of the election: that is always a considerable precentage of the voters. Again there will be many who are absent on that day. That is always a considerable proportion of the voters. I know it is in my own county and town—and it has been much larger than most people would anticipate. But here are the sick and those who are absent—as many of them are probably under circumstances they cannot control—who may, if they were at home, have wished to cast their votes in favor of the new State, but who will be deprived of the opportunity of giving a vote; and those votes will in effect count against their admission. As for instance, say there were three hundred voters, and one hundred cast in favor of admission and one hundred against, and the other third were simply absent: does not every gentleman see the project would fail for it would take at least one hundred and fifty one, a majority of the whole number, to carry it. The effect would be that the votes of those who were against their will detained from the polls and would have voted in favor, will be counted against it. Therefore, I think I am right in saying it is an unjust mode of ascertaining the sense of the people. Under ordinary circumstances we resort to the mode proposed in the resolution, because, we say, if people do not come to vote they must take the consequence; and, sir, if the polls could be held in every precinct in the county, that rule is certainly the fair one; and if there is anything we are to provide against, it is simply to provide against circumstances that would prevent the opening of the polls. The amendment of the gentleman from Taylor does not do that. It proposes to do what I consider impracticable, and also to do what I consider—as I have stated—unjust. It in effect may make votes against annexation, that if given at all would have been for it.

The question on the amendment offered by Mr. Sinsel was put, and the amendment was rejected.

MR. CALDWELL. Mr. President, I renew my motion to strike out all in the resolution after the word *"Resolved."* I think I am not mistaken that a majority of this Convention—and I think —indeed I am well satisfied—that a majority of the people of whom it is proposed to form this new State—are opposed, sir, to taking in the counties in table B as a portion of the new State. That is my firm conviction.

MR. STUART of Doddridge. What effect has your motion?

MR. CALDWELL. It strikes out the resolution entirely.

MR. STUART of Doddridge. Would not voting against the adoption of the resolution have identically the same effect?

MR. CALDWELL. Well, I suppose the effect would be precisely the same, if the question now is upon the adoption of the resolution. If it is intended that question shall be put now, I withdraw my proposition.

MR. VAN WINKLE. The effect will be simply to take the vote as on one question.

MR. CALDWELL. It was to avoid further amendments that I made my proposition.

MR. VAN WINKLE. Well, it would have that effect.

MR. POMEROY. I believe my friend from Marshall would agree to withdraw that if he was assured the Convention would take the vote upon the resolution itself; and those who are favorable to these counties coming in will vote for the adoption of the resolution, and those opposed to them coming in will record their votes against it.

I agree with the gentleman: I think this Convention is certainly satisfied of the impropriety of having these counties in; but if gentlemen are disposed to go on with a lengthy discussion on this matter, then I would be very favorable to his motion being before the Convention.

THE PRESIDENT. The Chair understands the gentleman from Marshall as having withdrawn his motion.

The question will be on the adoption of the resolution.

MR. MAHON. I would be glad if the clerk would read over the names of the counties included in the resolution.

The Secretary reported the resolution as follows:

"RESOLVED, That the district comprising the counties of Lee, Scott, Wise, Buchanan, Russell, Tazewell, Bland, Giles and Craig shall be included in and constitute part of the proposed new State, provided a majority of the votes cast within the said district, at elections to be held for the purpose on the third Thursday in April, in the year 1862, and a majority of the said counties, are in favor of the adoption of the Constitution, to be submitted by this Convention."

MR. WILLEY. It is hardly necessary to repeat, what I suppose the Convention very well understands, that it is my opinion—not worth much I know, sir—that we have not any right to include any county within the limits of the proposed new State arbitrarily or against its consent. The result of the adoption of this resolution would be, perhaps, to include some counties that were opposed to being embraced within the limits of the new State; and with my conception, sir, of our powers here, and of duty and justice in the premises, I would be opposed to the reception of even the minority of the counties coming into our new State against their will. But, sir, in looking at the relation which the counties embraced in the proposition now under consideration sustain to the thirty-nine counties originally included, I am compelled to express my opinion that they are almost absolutely essential to our existence, to our welfare and to our prosperity as a State. I would be willing, sir, to take them in as they come, provided they would vote to come in in contiguous territory as far as they would agree to vote thus to come in; and I had prepared resolutions to that effect, that provided this resolution did not pass, yet I would be willing to receive county after county as they might vote to come in; provided they were all contiguous and in convenient form; although some of the lower counties in the district might decline to come. I want Pendleton and Hardy and Hampshire, especially; and if they vote to come in I would be glad to have Frederick and Morgan; and if they would also vote to come in, and all these other counties also should be included, then I would be especially desirous of having Berkeley and Jefferson.

A Member. They are not named in the resolution.

MR. WILLEY. Not in this resolution? They are not named in the resolution which we are now considering?

I was arguing on the supposition that the amendment of the gentleman from Kanawha had been adopted, but I believe it was rejected. I am obliged to the member for reminding me of the fact. I shall then reserve for the present what I have to say.

MR. BROWN of Kanawha. I move to amend this resolution so as to agree with the wishes of the gentleman who has just taken his seat, as far as practicable: to insert in lieu of "the said district" the words "each of said counties." I wish, sir, to give to these people the same privileges we are extending to Hampshire, Hardy, Pendleton, Bath and Alleghany. I do not desire to make fish of one and fowl of another. I do not desire to force any of these people in against their will. I go upon the hypothesis that being of us they will be with us, if an opportunity is extended to them and they can express their sentiments. And I confess, sir, that I have not the apprehensions gentlemen seem to entertain of the terrible hostility of that people, because peradventure, Messrs. Ballard Preston and Sheffey, two leading men of that section of the country have exhibited a hostility and activity in this rebellion that are surpassed by none others. I have no doubt their influence is one great reason these people are now involved in the disadvantages that surround them. But when the armies of the Union shall have advanced, these gentlemen will nowhere be found. They will have left their place of residence and have gone to the land of "Dixie"; and the people once rid of their influence will return to their allegiance to the Union and will cast their fortunes with us as a people.

But it has been the burden of the song of gentlemen opposed to this section of country, that there are a large number of secessionists there; and they have been spoken of as entirely secession in their sentiment—that there was no man there who loved the Union or who would stand up for their country. Why, sir, if you will take now and look at the history of the country and take the men in hostility against it—the men in the army—those whom Letcher speaks of as composing the 70,000 men the eastern part of the State has furnished to this rebel army; you will find as large a proportion of them from the counties these gentlemen propose to take in as you will find in this section of country. I will warn you when you come to test the question you will find every county has furnished its quota—whatever was demanded—and that there is no distinction in that respect. You will find the Union men at home. When you have restored the authority of the government over that section and come to take this vote, you will find the Union men at home there as you will in the other counties along this line; and these men of hostile feelings will be beyond your armies. They will not be there to vote. They will have no part nor lot in the matter. Their only effort will be to drive back your armies and recapture the Union men who would dare to vote.

Therefore, sir, it seems to me, unless there is a manifest and determined disposition to make a distinction between these people and throw the balance of power and weight on one end of this State, that no principle of justice, or equality, or humanity, to our brethren there can prevent us from adopting this resolution as amended, to submit the question to the qualified voters whether they will be a part and parcel of the State or not, if a majority of the votes in each county shall be in favor of becoming such. I go upon the hypothesis that if this opportunity is afforded to this people, they will, every county, cast a majority in favor of this new organization, which is for their good as well as for ours. That is all I propose to remark on the subject.

MR. POWELL. I wish to say a few words on this subject before the vote is taken. The gentleman proposes to amend the resolution by inserting a provision that a majority of the votes cast in each county shall be in favor of the Constitution and new State; and if this amendment carries it seems to me it will throw us into a very awkward position. Here is Scott and Lee lying below Buchanan and Wise. If Scott and Lee cast a majority of votes in favor of being admitted into the new State—in favor of the Constitution, and Buchanan and Wise vote against it or not at all, we have a portion of our new State lying beyond us so that it does not touch the proposed boundary at all.

Arguments have been introduced here in favor of extending the boundary so as to include Greenbrier, Monroe, Mercer and McDowell that we might have a new State without so many notches in it—without having a fence-row for our boundary. These counties I think will make our boundary far worse than to have left out those counties that have already been admitted.

But, then, while I am up I wish to say that I am opposed—utterly opposed to the annexation of any more counties to the southern part of the proposed new State. We are sent here to form a Constitution for and to submit it to the people of the thirty-nine counties, or any more that might adhere to the proposition that was made by the June convention, by the ordinance of division that was passed on the 20th day of August, 1861; and if we annex new territory, as has been shown, we embarrass the new State, we cripple it, and in all probability we kill the measure. We defeat the proposition that has been submitted to the people and voted for by them by a large majority. We defeat the measure entirely, perhaps, and are left to shame for our failure. We embarrass the new state proposition. We cripple it and defeat it, in all probability. We introduce an element—we throw our arms, as it has been claimed, around these people; but can an individual take a serpent to his bosom and not be bit? Can an individual take fire in his bosom and not be burned? You throw your arms around this element—this secession, this rebellious element, and introduce them; and you will find that at last they will sting like an adder and bite like a serpent. You will feel the effects of it when you come to present your Constitution to the Congress of the United States for their approval or rejection. They will tell you that you have an element embraced in your territory that is disloyal and that may finally control the legislation of your proposed State. You have embraced in your territory an element that may control the laws of the new State. The result is they reject us, having already a sufficient number of secessionists in the halls of Congress.

But, then, another subject that has been alluded to here, that I should not have referred to had it not been referred to on the other side, and that is the slave population that we propose to now—

THE PRESIDENT. I would remind the gentleman that the discussion is on the amendment and not on the adoption of the resolution.

MR. POWELL. I am aware of that; but I wish to say all that I have to say on this subject while I am up, if it is not out of order. If the President says it is out of order I shall yield the floor.

THE PRESIDENT. The debate as far as it could be should be confined to the subject before the Convention.

MR. VAN WINKLE. Mr. President, as almost every gentleman has taken the range, I apprehend we shall have to extend the privilege to all who speak.

MR. POWELL. That was what I was aware of. I was about to say we were about to introduce or to take within our boundary an element which has been referred to—the slave population. It is true, it was said by the gentleman from Wood that it would only be about 8½ percent of the population. That may be true. That I do not deny; but that 8½ per cent amounts to almost 50,000 in the limits of the proposed new State; and if nothing else would destroy us in Congress—if nothing else would defeat our proposition in the House of Congress—it would be that. Without entering into a discussion on the merits of this question, I do hope that gentlemen will take this into consideration before casting their votes in favor of the annexation of those counties to the proposed new State.

But, then, we are told that we have not a sufficient amount of territory; that we want more territory; that we want to grasp all in our arms that we may have an abundance of territory. Will this, gentlemen, be an advantage to us? Will it, Mr. President, add to our greatness as a State? Individuals have been disposed to look upon the territory included in the 39 counties as insignificant—as almost beneath the notice of Congress, being so small. But then have gentlemen considered that we have embraced in the 39 counties, exclusive of the five that have been added, more territory than they have in Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New Jersey, or Delaware, and almost as much territory as is embraced in the great State of South Carolina that has turned the world upside down. And now, those states that I have alluded to as being nearly as large as West Virginia are among the leading states of this great Union. They stand as high as any other states. May I not say that they are in the lead; that they are in advance in many of the pursuits of our country, of some of the larger states. It is not territory merely that constitutes a state a great one; but it is wealth and intelligence and enterprise that make a great state. And by the shutting out of these counties that you propose to admit now the probability is—and I think it very probable, too, that wealth and intelligence and enterprising men will come from our neighboring states here and settle in our midst and clear out our forests and disembowel the elements of our greatness that are now embowelled within the boundary of our new State. The gentleman from Doddridge said he saw the object was to dodge the question—to dodge the main question at issue—by the amendments that have been proposed. Why not come out at once, he asked, and say we were opposed to the admission of those counties? Let me say, Mr. President, I *am* opposed to it. I am utterly opposed to it; and for the reasons I have already assigned. But, then, again, can those counties vote at the time that we propose to submit this Constitution to them? Is there any probability—is there the least probability—of them having the power of casting a vote at the time that we proposed to submit this Constitution to them, even if they were disposed to? Well, it is true from some of the arguments that have gone before that it is very probable that they may. We were told last week while considering the admission of Greenbrier, Pocahontas, etc., that it would be utterly impossible for them to vote at the time we proposed to submit to them the Constitution; and now it is even probable that the counties lying over the Alleghany may vote on the third Thursday of April! And if they can vote on the third Thursday—or if there is a possibility of it—why, sir, those counties lying further over in the valley, adjoining the Blue Ridge will be enabled to vote with equal certainty! Do you not see the fallacy of the arguments that have gone before? If those counties lying next to us will be utterly unable—if it will be utterly impossible for them to vote, how can it be probable that those lying beyond the mountains can vote? No, sir, there is no probability of their being enabled to vote; and why mock them by putting before them this dish when we know they cannot touch it? Leave them out, gentlemen; I do not believe they want to be with you; and if they do not, I have no desire for them that they should be until they repent and bring forth fruits meet for repentance—until they show by their works, by their actions—that they are sorry that they have thus rebelled against the best government the world ever saw. I have but little sympathy with secessionism; but little sympathy with those that have raised up arms against us, that have rebelled against this great government of ours—especially while they continue in rebellion; but if they come back; if they repent of their sins; if they come and bring forth fruits meet for repentance—then I have no objections to receiving them. But until they have done so, let us leave them outside; and if ever they want to come in and we want them—which I think is very doubtful—then it may be accomplished by other means. We are not expecting old Virginia to always remain in her present condition. We do not expect a rebel army always to be stationed at Manassas, Richmond, Petersburg, and Winchester. We expect the day to come when the rebellion shall be crushed out and loyal men shall take the helm of old Viginia again; and when they do they may not want these counties, if they want to come with us; and if we want them we may acquire them by treaty. We may then be enabled to bring them in.

O, but, says one, we want them! We want them! And the right has been assumed here that if any territory lying contiguous is wanted and cannot be obtained by purchase or treaty, we have the right to conquer it. The very doctrine of Walker's filibusterism: and I am opposed to it. If they are not willing to come, we do not want them; and if we undertake to force them in, we adopt practically the doctrine of Walker.

Let us, then, leave them out. Let us leave them beyond the border; for I do assure you that if by the action of this Convention the new State measure is defeated, that this Convention will have to answer for it, severally, to their constituents, who sent them here to make a constitution. I do believe they have gone beyond the limits of their power in taking forcibly those counties that have already been added to the boundary. Then, gentlemen, think on this matter. I intend to vote against the admission of these counties, and I think, any other territory.

MR. POMEROY. I do hope, now, we will take the vote on this amendment, and also on the main question before we adjourn.

MR. HALL of Marion. Mr. President, I do not like to occupy the time of this body in speaking, but trust my good friend from Hancock will, however, remember that we came here to talk, and think, and know what we do, before we act; and the greatest haste is not always to secure us the most speed.

I desire, before I vote on this question to understand the proposed amendment. I desire to ask a question. Do I understand this proposition of amendment aright, to say that before any one of these counties can come in—and I think that is the effect of it—that unless each and everyone of the counties shall by a majority determine to come in, *no one* shall come in?

MR. BROWN of Kanawha. That is it.

MR. HALL of Marion. Allow me to say, I must oppose that amendment. A single county in that district is placed in a position to do what gentlemen complain so much of our having done in Convention here—of absolutely coercing all these other counties out of the State. Now is that not the effect of it? I am opposed to it, if that be the effect. The amendment proposes that unless a majority be cast in each and every one of these counties in that district, that no one of those counties shall be admitted. I apprehend that that would accomplish the ends of those who tell us that they are opposed to allowing *anybody* to come in—of those who are so afraid of these men that they will not touch them until they repent and bring forth fruit meet for repentance, and who would yet shut them out and not allow them to repent.

My friend, sir, in another position, does not say that we cast you off because you have not repented; but he says, you shall not repent. That is his proposition; and it occurs to me that would be the effect of the amendment of the gentleman from Kanawha. He does not hold out the olive branch and say "Repent!" but he says if you are willing to repent and by your action and your vote to say you have repented and will come along with us—no, sir, you shall not do it! Now, I am opposed to that thing, too. I know my friend does not advocate that doctrine elsewhere; and I can hardly believe he means it here.

MR. POWELL. Yes, I do.

MR. HALL of Marion. He says he does; and therefore I must conclude that he does (Laughter).

I want that we shall not trammel or tie up any portion of the people within the district by the mere contingency that a single county cannot vote for going with us. I do not like secessionists any better than my friend. Some I like in spite of secession; and I do not believe they are a lost element; that they are all demons or that they intend to cut our throats; though some of them would. I think there are worse things upon earth than many of these secessionists. I do not think we have any cause particularly to be alarmed if they show through this very means we propose giving them, the evidence to us that they have repented. I am not afraid of them.

MR. BATTELLE. Will the gentleman from Marion allow me to interrupt him?

MR. HALL of Marion. Certainly.

MR. BATTELLE. I feel anxious for one, before we take a recess, to have the amendment reported by the Secretary, that I may know just what it is.

MR. HALL of Marion. Well, I, too, would be glad to have it reported.

The Secretary reported it as follows:

Strike out "the said district" and insert "each of said counties," in the 15th line, and in the 19th line strike out "and a majority of said counties;" so that the resolution would read:

"RESOLVED, That the district comprising the counties of Lee, Scott, Wise, Buchanan, Russell, Tazewell, Bland, Giles and Craig, shall be included in and constitute part of the proposed new State: provided a majority of the votes cast within *each of said counties*, at elections to be held for the purpose on the third Thursday in April in the year 1862 * * * are in favor of the adoption of the Constitution to be submitted by this Convention."

MR. BATTELLE. "Within each of said counties"—that is all, sir. I wished to understand exactly the phraseology.

MR. HALL of Marion. Then, Mr. President, one of two things must exist either that all these counties are made dependent on the action of anyone, and that although the vote should be unanimous in every other, yet a majority of one against coming with us in a single one of those counties will exclude the whole of them. Now that is coercion (Laughter). On the other hand, it occurs to me that would be manifestly unjust. If, upon the other hand, that amendment contemplates that you will take in such counties as vote to come in and only such, then I see another objection to it, to which my friend from Harrison alluded, and to which I am also opposed; for I am a coercionist. Then you go to piece-mealing this thing; and you go to setting your saw-teeth again. I think there was eminent wisdom and propriety in the arrangement proposed in the report of the committee, that when you have gone to a certain line, then if we go beyond that we go merely to take in a group of counties whose interests are homogeneous with ours and with one another. Hence it would be a matter of much interest whether a county should go one way or another, and it would have much to do with determining their action. Yet they must act in ignorance of that fact.

And, then, as I suggested before, this proposition is absolutely to cut them off and give them no chance for repentance. If you exclude them now, there is no opportunity after this. You need not expect when you have secured and fixed your boundaries to your new State that old Virginia is going to give you a piece here and a piece there, for the purpose of rounding up your lines, or for any other purpose; because there will be an element down there more dangerous than this valley element; and they will feel somewhat piqued at us, just as old mother England is vexed with us to this day. Unless they come in now, it is no use talking about their ever coming in; and therefore, I prefer to give these people a fair opportunity, so that I must oppose the amendment and resist the objection made to allowing these people to act fairly, freely and fully in this matter. And I am not one of those that will be alarmed and frightened if this people is disposed to come with us. I would not be alarmed if we should declare that our lines should go to the Blue Ridge. I would not be alarmed at all. I am satisfied we could maintain our position. I am not afraid that the Tartar would have caught us at all. Because we know this fact: that this people have an interest that is homogeneous with ours, and that eastern Virginia has pertinaciously persisted in preventing that very people having the outlet that their interests have always required and demanded, and which they have always been clamorous to obtain, but unsuccessfully. And these people are going to look at this thing; and we should consider this fact, too: that as we are acting in the absence of these parties, who they tell us have committed a very grave offense in not being represented here—with a knowledge of the fact before us that they cannot and could not be here—I say we should bear in mind that we owe something to that people, situated as we are; and that we should not be so selfish as to conclude that the whole world is right round about us and that there is no people anywhere that have any demands upon our considerations of justice and equity.

Now, sir, the proposition to leave those counties out because there are secessionists there, is a proposition that would exclude the counties that we have taken in and must necessarily include as part of our territory. And to presume that because they have been under secession power, that they are to be excommunicated as for committing the unpardonable sin, is doing an injustice to them and that which would have excluded a very considerable portion—I do not know, sir, but a majority—of the very territory that is represented on this floor. Why, sir, how would it have been, but a short time ago with the county of Kanawha, the county of Jackson or the county of Roane? How is it with Gilmer and Calhoun now? With all that tier of counties a short time ago? They have committed the unpardonable sin; but Uncle Sam has purged them of that sin and they are no longer dangerous. Let us judge of what that other people is by this same rule; and let us say to them at all events that if they show that they do heartily disapprove of this thing of secession and they want to come with this people, that they know are loyal, come along and go with us. Hence it is that I oppose the amendment and all the objections that are urged against the resolution; because I want this whole people to have an opportunity of speaking; and if they do determine, in sections so situated that we can receive them without making a saw-tooth line, or including them in a form that would be really deleterious to our own interests and the interests of those that would be left, then I say let them come along. And I trust that we will act with reference to that; that we will not be alarmed about being seized by these few counties. Why it really seems to me the very name of Wise, given to part of that territory, has more terror for gentlemen here than the old man himself had. Now, I think neither of them is much to be feared. One of them talks a great deal, and the complaint is that the other has not said a word.

I trust this amendment will be either withdrawn or voted down, and that we will then act on the resolution itself—not as a bugbear; not as something set there to catch us; and that we will act in this matter not with an idea to see that something may occur by which we may be made responsible for this that or the other. We are sent here to discharge a solemn duty; and we must do that acting on the best judgment we can bring to bear; not looking ahead to what the people may say of me or you or anybody else in this body. We must do our duty without reference to any such considerations. It is true it is a proper consideration whether this action would prejudice the whole movement. If I believe it would thwart the original purpose I would then say to that people, we would have you come, if we could without our own destruction; but as we could not, I would not do it. But I have no such idea as that. And thus it is I shall vote to allow all those counties that are really placed and made part of us by nature and must of necessity be part of us—I will allow them whenever they are ready, to go along with us, to go; and I will not shut the door against them in an hour when they cannot even speak and even petition us. I will not turn my back on them and their cause by construing their inability to act as a refusal to ask our aid or protection. I shall not say that this inability to act shall be construed as an indisposition to do so. I trust we shall not so act in reference to any of those counties.

The hour for vacating the Chair having arrived the Convention took a recess.

THREE O'CLOCK, P. M.

The Convention reassembled.

MR. HERVEY. Before proceeding to the regular order of the day, I desire to offer a couple of resolutions, which I desire to have read, laid on the table and ordered to be printed.

THE PRESIDENT. No one objecting they will be received.

Mr. Hervey then sent to the Secretary's table the following, which were disposed of in accordance with his wishes.

"1. RESOLVED, That this Convention earnestly request the legislature of Maryland to direct a vote to be taken in the counties of Alleghany and Washington in said State, embracing the proposition, whether the people of said counties are in favor of annexing themselves to the State of West Virginia; and if it shall result that the majority of the votes cast at said election are in favor of so annexing themselves, then the legislatures of Maryland and West Virginia are desired and requested to unite in an application to the Congress of the United States for a union of the said counties of Alleghany and Washington with West Virginia."

"2. RESOLVED, That in the event the counties of Alleghany and Washington, in the State of Maryland, become united to West Virginia, then the eastern boundary of West Virginia should be the Blue Ridge."

MR. POWELL. Mr. President, I have a couple of resolutions here which I would like to offer.

Mr. Powell sent to the Secretary's desk the following; which were disposed of as the others.

"1. RESOLVED, That the legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation issuing bank notes of any description."

"2. RESOLVED, That the legislature shall provide by law for the registering of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie."

THE PRESIDENT. The Chair would respectfully suggest to members, that much time is lost by departing from the strict rule of debate; and that very much time, indeed, would be saved if gentlemen would confine themselves as closely as they can to the questions under discussion. Perhaps the Chair is more to blame for the latitude that has been taken in debate than any of the members; but he would now request that gentlemen confine themselves as closely to the question in debate as possible.

MR. BROWN of Kanawha. I wish to withdraw the motion I made to amend the resolution before the Convention, and to state the reason for doing so. I made that motion with a view of obviating the objection of the gentleman from Monongalia to forcing, by the operation of that resolution if adopted any county in the district into the new State that happened to vote out, and a majority vote in. Failing, sir, to satisfy the gentleman, as I believe, and finding also that I incur the disapprobation of another gentleman, I unhesitatingly withdraw it. I would say, further, that the committee before whom this whole subject was, after a long and earnest effort to agree on the best plan for boundary and the best boundary to harmonize and attain the great objects we were assembled here for, adopted the resolutions as they stand in the report; and I believe that the Convention, if they act wisely in the matter will arrive at the same conclusion, adopting the report as it stands, with the simple alteration, by transferring, as we have already done, the counties of Buchanan and Wise.

MR. HAYMOND. Mr. President, I desire to say, before the vote is taken, that I am opposed to this resolution. My people, sir, did not send me here to hunt up territory for a new State. They did not send me here, sir, to hunt up people to frame a Constitution for. They sent me here to form a Constitution for those within the boundary they had fixed; and I am here, sir, for that purpose and for nothing else.

I am satisfied, sir, with the territory we have. It is a territory that combines the interests of the people. It is a territory within which no great questions can arise to divide the people. It is a territory, sir, that embraces one of the finest grazing countries in the world. It is a territory, sir, that is full of minerals. It is a country, sir, that will become one of the finest manufacturing countries in the world, if you can give us a Constitution that will draw capital from other states. And, sir, I repeat it: I am not here to hunt up territory for a new State; and my people will sustain me in it.

MR. TRAINER. Before I cast my vote on this question, I wish to give my reasons for the vote I expect to give.

In the first place, sir, the county which I have the honor in part to represent, is very strong for a new State. They want a new State. They will be satisfied with nothing else; elected their delegates, so far as I was concerned, on the understanding they would expect us to make them a Constitution for the territory embraced in the thirty-nine counties; and I feel, sir, that I am not willing to do anything to hinder the accomplishment of this great object which we have in view. And after hearing all the debate on this subject, to which I have listened attentively and with a degree of interest—I am satisfied, sir, in my own mind that the adding of those counties to the territory we have already fixed upon would be an impediment and would hinder very much the accomplishment of the great enterprise and object we have in view. For that reason, I am opposed to the receiving of the counties mentioned in the second resolution.

I am opposed to it for another reason. I think it has been very clearly shown in this Convention that it is impossible for those people over there to give any expression on this subject whatever; that they are so encumbered, even if they were willing and anxious to do it, that they will not have the opportunity to do it. It was argued on this floor, a few days ago, that the counties of Pocahontas, Greenbrier, etc., which were placed in the same category—or at least for which the gentleman's proposition was made—if they chose to come in they might—it was argued then that those counties could not possibly vote; and to place them in that position would be just the same as excluding them from the State altogether. Well now, sir, if those other counties lying west of the Alleghany mountains cannot cast their votes in April next, how do we expect the counties beyond the Alleghany mountains to do it? It looks like an utter impossibility; and I cannot help but think we have lost time here talking about a thing that is impossible, impracticable, and that which never can be accomplished at all.

Another reason, sir, which I have for voting against this resolution is this: I am, like the gentleman on this floor some days ago, opposed to those "sliding lines." We have fixed our line on top of the Alleghanies; and I feel opposed to sliding down the Alleghanies; so far as that is concerned, at the beginning corner down there on the Kentucky line, I am opposed to going any further in that direction. Let us stick to the top of the Alleghanies, at least at that point, and pursue them, at least a short distance before we leave them.

For these reasons, I shall feel bound in all conscience to vote against these resolutions. Yet another reason which I may offer is simply this: The gentleman from Doddridge said this morning the great central idea in this whole matter after all is, we do not want those counties. Well now, sir, let me say to him so far as I am concerned, I do not want them. I do not want them, and simply for the reason that they do not want us. I do not want to be unequally yoked together. This people so far as I can learn has no connection with us—never had any. They are on the east side of the Alleghany mountains; and their trade, commerce and intercourse is all in the other direction; and if you embrace them, how will they get here? We will have to construct a railroad or some other public conveyance, in order to bring their trade and commerce in this direction. It seems to me, so far as I can judge, they have no identity with us here; and that would be trammeled, we would be in danger of crippling the great enterprise of a new State in West Virginia, to attempt to embrace them for a moment. I think I have tried to look at this matter impartially and deliberately and so far as my own judgment is concerned, this is the conviction of my mind. I am a strong friend to a new state, and representing a people that is for it all the time and always has been, entertaining the views I do regarding the proposition before us, I feel I shall be bound to vote against this resolution.

MR. PARKER. I find, on examining the map, that the county of Craig lies outside of the county of Alleghany. The county of Craig is one of those included in this group which I understand is now before the Convention; so that if we should vote to take them in, we have the county of Alleghany—lying near the Alleghany mountains, or the ridge of them—lying inside of the county of Craig. Of course then it will impose upon us the necessity of taking in that county also.

THE PRESIDENT. I would remark to the gentleman that he will find the county of Alleghany in the next resolution.

MR. PARKER. If the President will spare me a moment: Now, I would call the attention of the Convention to the fact that the ninth section of the ordinance authorizing a division of the state, makes it incumbent upon the new State to pay every cent that has been expended by the State of Virginia upon the territory that we take—every foot of it! That is clear in the 9th section. There is no mistake about that. Just refer, gentlemen, to the maps, and you will see how the county of Craig is inter-locked with Alleghany. Now, I find by reference to the acts, etc., that upon the county of Alleghany has already been expended as follows: for the Covington and Ohio Railroad, in 1852-3, there was an appropriation of $1,000,000. One half of that was expended at the Ohio end, beginning at Guyandotte, between there and Charleston. The other half was expended in the other end in the county where Covington is; because it begins at Covington. Five hundred thousand dollars, there was expended in the county of Alleghany. In 1856 there was $500,000 more. In 1857 there was $800,000. In 1859-60, there was an appropriation of $2,500,000; making in all, $4,300,000; which has been or is about being—for the last appropriation is not quite done—expended in Alleghany county.

Now, Mr. President, this is the point; and this makes it, in my view, so far as I represent my constituency, have great weight with me: whether I shall join in a recommendation to the legislature of our State to bring in the county of Alleghany; which we must do if we bring in the county of Craig. Otherwise we leave—what? A spot like a chequer-board. This is West Virginia, now. We jump a piece further and we get into old Virginia.

There is also, Mr. President, the Central Virginia Road; which runs from Staunton, and is now completed to Covington, and going on, is completed to within twenty miles of White Sulphur—about that. This road runs for a number of miles through Alleghany; and three-fifths of this expenditure we have got to pay I have not the means now of getting at the precise amount of it; but it is a good deal among the mountains, and it is expensive building railroads among those mountains.

Then, in addition to that, in the county of Alleghany there have been large expenditures in behalf of the James River Canal. I happen to have all those James river reports at home, showing the large sums expended for surveys they have been making over the summit level at Jackson's river, upon the Alleghany mountains; the most of which has been expended in Alleghany county. The canal I think is now done to Buchanan, and is in process of being built some twenty miles or thirty miles further; and then the surveys have been carried over the Summit level, as it is called, and a good deal of money expended there.

Now, it seems to me—I believe there is no other suggestion to make—that a great deal of time has been spent upon this question. I do not want to take up a moment longer. I suggest this in view of all the facts that surround me; for I stand here for my constituents simply to recommend to the legislature. They have told me what to do—to come here to try and help make them a government for *their* State as prescribed in the ordinance, not *ours* as we may choose to prescribe it. It seems to me, sir, that every argument that carried us to the summit of the Alleghanies forbids our going one inch beyond it. Every consideration which carried us up to take in the five counties which we took in on Saturday forbids us with equal if not greater force, to go any further. It was then, the streams were running hither; we were drinking the waters that came from the top of the Alleghany mountains (merriment). Well, now they want to get all the water that is running the other way (Laughter).

MR. BROWN of Kanawha. Where does the Kanawha or Guyandotte river head?

MR. PARKER. I presume the gentleman is in earnest. The Guyandotte heads in Wyoming. The Kanawha divides into Gauley and New rivers. The Gauley turns to the left; which we all know. You know, I presume. Very probably the gentleman knows better about it than I do. The New river does not head, according to my best knowledge of geography, in either of the counties the resolution proposes to include. If I am wrong, the gentleman from Kanawha will correct me.

MR. LAMB. It heads in North Carolina.

MR. PARKER. Then, if the gentleman from Kanawha is consistent he will have to take in the State of North Carolina (Laughter).

MR. PRESIDENT. I shall take up no more time.

Several Members. Question! Question!

MR. STUART of Doddridge. I am glad we have got down to the resolution at last, and have something before us we can act upon. I do not propose to detain this Convention. I am very glad the President indicated that he intended to rule us down to the question; and I hope we will stick to that.

One reason I want to notice—one or two reasons—made by the parties who oppose this resolution. And one reason of my friend from Harrison—the reverend gentleman—is that he doesn't want these counties, and assigns another reason that they don't want us. Now, sir, it must be admitted on the part of this body that this is an *ex parte* proceedings towards this people. We are acting without proper knowledge in the premises; and all we propose to do in the world is to submit the question to these people; and then so far as I am concerned, I would not ask whether they wanted me. I know well they are brothers in sentiment and heart with me; and if they want to come into the new State—want to be in the Union, and associate with us—I want them.

Again, I want to say we are acting without proper light and knowledge, unless gentlemen have a kind of clairvoyance and go over in the spirit and learn what those people want. I know always heretofore—in all the crises and fights for western rights and privileges—that those people have been side by side with us; and I have nothing now to convince me—to satisfy my mind—that they are not this day side by side with us in every respect. But in order to settle this question, I want to submit it to the parties themselves, who know more about it than any of us. Now it must be admitted that the people of these counties know better what they want than we know.

Now, the great hardship here, Mr. President, is to assign as a reason that you will not submit this question to these people, because they are not here represented on this floor. We all know the reasons why they are not here. It cannot be asserted, and no member of this Convention would be willing to make the assertion—that there are no Union men there. Then, sir, if these Union men could be here they would be here, in order to represent the wishes of their constituents.

Now the reverend gentleman from Harrison seems to think we ought to be confined to the thirty-nine counties; and he has the honesty to come out and say that we don't want these people. He appears to be one of the elect. I myself, sir, am for free grace (Laughter). And if those people want to come from under the yoke and bondage that is oppressing them by eastern legislation, I, as a member of this fraternal band here and a friend, and one that has a common sympathy with my fellow man, want to give them the opportunity. I am sorry to see the reverend gentleman taking this position; because I always thought it was his business to inculcate and preach a different doctrine.

Now, sir, another reason assigned by these gentlemen is that it will militate against us in obtaining our rights and our new State before Congress. Now, gentlemen, will not just the reverse of this be its operation? Can you see any other side to this question? Let me call your attention—but I believe it is a new idea; and I do not know that I have been able to advance a new idea at least in my present speech; for the subject has been so often travelled over before; but if I can advance a solitary new idea I may happen to be of some advantage to this body—Mr. President, suppose we confine ourselves to this restricted limit of the thirty-nine counties—or, if you please, the forty-four counties; suppose these counties whose interests are identified with us—who are West Virginians—who have a right to complain of their grievances—get up petitions and go down to Congress and say that they have been excluded from the rights and privileges of coming into this new State—Mr. President, I, if a citizen of one of those counties, what do you think I would do? Having the same feeling that animates my breast now as a citizen of West Virginia, I would get on my horse, sir, (Merriment) and I would ride those counties and get every Union man in their bounds to petition against the new State. Because I would not desire to be forever debarred from the privileges of a West Virginian, tied down to eastern aristocracy and eastern legislation, which they have been complaining of as long as we have. Do you believe this may and will happen if you do the great injustice of even refusing to submit to them the question of whether or not they want to come into the new State? It does strike me very forcibly this will be the course pursued by our friends there now. We will make them our enemies in order to get the new State.

Now, Mr. President, as I do not want to detain this Convention, and cannot advance another new idea, I am willing that the question should be taken to accommodate the gentleman from Hancock, who is very anxious it should be taken.

MR. BROWN of Kanawha. Another new idea. The Honorable Mr. Whaley, who is a member of Congress, and whose district lies on the Ohio river, embracing the county of Wayne, Logan and Wyoming, extending on to McDowell and touching Tazewell, Giles and Craig, and on beyond that the county of Botetourt, we should think would have very strong reasons to say to Congress that a portion or a large majority of his constituents would be thrown out of this new State if they should have no opportunity to say whether they would come in or not. He will say their interests should be consulted as well as ours, and whatever influence he may have with Congress may be exerted to defeat our admission by the Congress of the United States.

MR. POMEROY. With all the anxiety we have for the vote on this question to be taken, I do not think it would be exactly in accordance with all rules that I conceive to be just and right to have two speeches from the able gentleman over the way and then the vote peremptorily taken. My friend from Doddridge appears to have got the anxiety about taking the vote just at the time his speech closed, (Merriment) but never appeared to have any before I had that anxiety pretty strong in the morning, but I do not know that I have it quite so strong now (Renewed mirth).

It might be well to answer the argument of the last gentleman, I do not care about going into dry statistics here. There is something very peculiar about the way gentlemen get seats in Congress at the present time. They admit members whether the people vote for them or not. I have no idea the gentleman alluded to ever expects to represent that district, or any other, in Congress after the present Congress; so that that argument has no weight whatever in the settlement of this question. And even if it had, are we to be influenced upon the votes we give here for a great principle where the new State is involved by the consideration of whether a certain man gets a specific sum of money as member of Congress? Certainly not. As the gentleman from Marshall very well remarked, the great idea with me, when we have got this far, is to accomplish the object we have in view; and I am not willing to stand here and throw insurmountable obstacles in the way of the accomplishment of that object. I was not sent here for the purpose of placing one barrier after another between our admission before Congress and this new State, but to help frame a Constitution for a people who had already decided by their votes that the new State should be formed in accordance with the ordinance passed by the preceding Convention; for I contend that we had no power or right to alter these bounds. I have not heard—and in fact I do not expect to hear—the argument of the gentleman from Harrison answered; because I conceive it cannot be answered either by the learning or by the eloquence of any man or set of men combined; because the arguments themselves are unanswerable in their very nature. In regard to the question now of a dodge, it appears to me that dodge is all on the other side. Here it is contended at great length—

THE PRESIDENT. The Chair would remind the gentleman from Hancock that he expects gentlemen to debate the question at issue.

MR. POMEROY. Well, sir, that is the adoption of this resolution—is it not?

THE PRESIDENT. Yes, sir. The Chair has permitted a good deal of latitude heretofore; but—

MR. POMEROY. I understood that I was debating the question at issue. That was what I was trying to do.

THE PRESIDENT. (resuming) Where gentlemen have departed heretofore he expects in future a stricter compliance with the rule.

MR. POMEROY. I thank the President for the suggestion. The question is the adoption or rejection of the second resolution of the report of the Committee on Boundary and in regard to that resolution I am opposed to its adoption. I claim the right to briefly state the reasons why. And the first thing is what do we gain by the adoption of this resolution that introduces a people here, as has been already stated, that we have no reason to believe want to come in. We introduce a people that we do not want admitted here. I am candid to make the same admission. How then can we walk together unless we be agreed? They want to have no part in this new state matter; and we do not wish that they should. That is certainly plain enough to be understood, as to my position. I do not want them in here. And secondly, and another reason I will give: it injures us. It materially injures us as a state. They have no interests that are identical with our interests. They have no interests that are in common with ours; and therefore instead of proving a benefit they would prove an injury to us if admitted here. The doctrine set forth that we ought to exercise feelings of charity towards these people is not a doctrine that comes in very well in this place. We are inflicting no injury on them certainly by leaving them where they are. It is the place of their choice. They ask to remain there. They do not ask to come here with us.

But the strongest objection, perhaps, is this: gentlemen have contended that a vote could not be taken in certain counties and that therefore no vote ought to be proposed to them; but here are counties lying further on towards the seat of the rebellion, where it must be still more difficult to take a vote, if an impossibility could be more impossible, and yet they propose to open polls there and take a vote! And then the question comes up—and that is another reason why I am opposed to this resolution—the question comes up before the Congress of the United States: you ask for territory that would not vote to go in. Do you suppose that we would extend the boundaries of the new State without consent of its people? And will not that prejudice our cause there? Why it seems to me so plain that the man that runs may read. It is evident these counties would not open polls. There were none in October. And what evidence have we that there will be any in April? Why the evidence is conclusive that there will not.

Then for these reasons—but I do not wish to go into a lengthy discussion of this matter—I think this resolution ought not to be adopted; I think that we ought to say by our votes that we do not wish to extend the boundaries or transcend the power prescribed and conferred upon us by the convention which called us here.

There is just a single remark I would like to make, Mr. President. I believe we ought to stick directly to the rules. And I really believe the way we have been working on this matter, that by introducing various amendments, the same gentleman upon the identical same resolution can make a dozen speeches if he sees proper; and the amendment may be discussed for a long time and then voted down or withdrawn. And I hope we will—and that is the reason I make the suggestion, not for the purpose of cutting off my friends—take the vote and get along with a little more rapidity, as the gentleman from Doddridge has expressed a desire to have the vote taken, and I feel very much like a desire on my part to have the vote taken now (Laughter).

THE PRESIDENT. The Chair regrets very much the necessity of calling upon gentlemen to adhere closely to the question immediately under discussion, but he finds there is such a necessity.

MR. HALL of Marion. I do not propose to make a speech. I think the Convention has decided the question as to our power; and in voting upon this matter we ought not to be governed by that. I think the Convention has determined that it has a right to act on this question. If it has not that would be a very proper and legitimate subject for discussion now. I think we have had that fully discussed. These suggestions of that sort are not a legitimate argument to influence any man in voting on this subject. Another suggestion: I would say to my friend, I think it was not suggested by the gentleman from Kanawha that we should be influenced by Congressmen in that region of country in office; but he was looking to the question of what may result from not giving these people a chance. I am free to say here—just as they have bandied it back very frequently because I was an advocate for the coercion of Greenbrier, Pocahontas and the counties included with them—I admit it was argued it would be unjust and improper to leave it to the vote of that people to be taken at that time—

MR. WILLEY. If the gentleman will excuse the interruption—I do not know anything myself about the views of the member of Congress to whom the gentleman from Kanawha has alluded;

except that I believe he is opposed to the whole project of the new State. Will some gentleman inform us how this is?

MR. HALL of Marion. I am not advised of that matter; but I understand the suggestion to be this, and not that the parties should have money growing out of his office: unless we extend an opportunity to those people, a thing of this kind might and in all probability will be gotten up and be very much in our way. Now, I am free to confess here—while I intend to vote to let these people vote—that I have no more idea that they will be permitted to vote than that they will gather up and pack off to the moon. I have no idea they can do it. That is why I was arguing against leaving it to a vote in Greenbrier. But I think there is propriety in showing up any objection that may be raised there. And then again it is but an act of justice to those people and gives them their chance. I do not think they will come along with us; because I do not believe the time will be long enough, or that they will be permitted or can vote. If they should I do not think they will vote to come along with us, unless they will be so disposed that they cannot do us any injury. And thus it is that, whilst I have no idea the vote can be taken, I am willing at all events that we shall extend to those people the opportunity and leave them the opportunity to avail themselves of it; and if the circumstances prevent it, the matter will not fall upon us; but it will be their misfortune and not our fault.

Now, I really and undoubtedly believe that is all there is in that.

MR. HAGAR. If I make anything it is generally a short story out of a long one. I cannot exactly definitely answer the question asked by the gentleman from Monongalia in reference to Mr. Whaley; but I suppose he was elected by a few Union men down in that region; but whether he is opposed to the new State or not, I will venture to say he is opposed to secession.

Now let us keep this one thing in mind: every county we add—secession county—in that direction, gives them more strength; and they have a good deal there now, if you recollect. Now they control a portion of Kanawha, Putnam, Cabell, Wayne, Logan, Boone, Fayette, Raleigh, Nicholas, Greenbrier, Pocahontas, and a few others; and then the scattering secession vote that is through your country, all through the new State—they will stick together and if they hold an election, at all at that time, it will be to vote the new State down. Let us think of these things. Caution is the parent of safety. We have stretched our arms in there as far as we dare do it, to my notion and by stretching them too far it might prove the truth of that declaration that says, Woe unto him that adds farm to farm.

MR. PARKER. The argument of gentlemen on the other side of the house seems to have come now to this point, as I understand it: that if we act upon and exclude these counties we shall do the inhabitants living within those counties a great injustice. That seems to be the final settling down of the argument. Now let us look for a moment and see what West Virginia has done towards the people of those counties. Six months ago she gave an invitation, which is in the ordinance there—published in all the papers, and has stood since open and bold; and everybody sees it, and everybody living in those counties knows it. There is no doubt of it. Now what is the response? That is the way to try things. It is not the talk, and imagining this and guessing that, and there is something over there, that determines how men act. The invitation has gone out upon the winds and everybody knows it. It is idle to talk otherwise. What now has been the response? That is the question. Not a word. They have not even given us a passing notice. What do they do? Treat us as a "bogus government," and spurn us. That is it. That is true. I believe there are some good Union men there; but they are far between. Having stood here six months in this generous, liberal, fraternal attitude of invitation, we have not heard a word, only they have called us a "bogus government." They spurn us from their embrace. That is it. Thus stand the facts. Now what? Well, we are going to give them six months more. For what? To spurn us again! Thank God I am not made of that stuff! Nor are my constituents. A supplicant! Now do come, and don't call us bogus any more! (Laughter.) Do come! I undertake to say, Mr. President—I speak it upon my firm conviction—that not one of us in this Convention could go to either of those counties to carry the message which the gentleman from Kanawha is so anxious about, for fear somebody will suffer over there. Neither he nor I, nor any other gentleman of the Convention could carry it there and come back alive. And those are the people that are going to suffer! With far more probability of an alliance might we go to the emperor Napoleon and ask him to annex his empire to our little State. He would not treat us to a rope. He would not scalp us; but yonder they would do both. That is my conviction—not from prejudice but from facts. They are facts which are palpable to every man, as we know them to be.

Now for us to lie by here for five months, and hang up—for what? Carry it into April, the gentleman says. Suppose they vote against it. These counties are proposed in two divisions. Suppose the people here vote and we take the outside tier, and the people of the inside tier reject it—why, what are you going to do? Well, there is so much of our State—but how are you going to get to it? Got to go over the old state to get to it.

One further fact and then I am done. These gentlemen that are so tender—that think it is going to do these people such great wrong to go and act here and not give them a chance to vote—propose to submit it to 55,000 people embraced in the counties now under consideration, and yet they have really got it fixed up here so that fifty out of this 55,000 people may secure a majority of the votes cast and a majority of the counties. And they start off by saying we must be tender or we shall do them a great injustice! We must take their full suffrage on it; and, O, we'll fix it up in just such a way that 50 shrewd men, under the garb of being Union men, could get together and concoct the whole concern, and then bring it up here and say, Here it is; and we have got a majority of the whole vote and a majority of the counties. How many did you get? Only 50. And when there is a motion made to enlarge it so as to take a fair expression of the people—the very thing gentlemen ought to seek—that is get an expression of the majority (that is the way counties speak, that is, a fair expression of that majority)—why do not they march up to the mode that will give it? That will not do at all. But we must have it so that ten or fifteen or twenty shall bring each of these counties in here. My constituents do not want any such arrangement. I do not want it; I do not recommend it; and I shall therefore vote against it.

MR. BROWN of Kanawha. The gentleman has told us so much about his constituents—I believe if he will look at the records they are of a much smaller proportion than we expect to get of the voters of the counties we propose to admit.

The gentleman has said we did not expect to and could not now enter the region of country that we are seeking to give the opportunity of voting themselves into the new State. That is true. That has been the declaration of us from the beginning. And why is it? From the hostility of the people? Certainly not. It is because there is a rebel army between us and them. Why, I might well ask the gentleman, why did he stay on the north side of the Ohio river when Jenkins was in his county? Was it because he was afraid of his constituents? No; because there was a hostile force there from which he had to take to flight. And for the very same reasons he or I could not go into the county of Giles, though we could go all the distance in a canoe, without crossing mountains or meeting any obstructions but falls in the river. But, sir, we anticipate that the government of the Union—that government to which we owe allegiance, and that government which we are expecting to maintain our rights—will roll back this oppression as it has rolled it off of him and us. My county was in that condition and his was. We, too, were silenced; but now we can open our mouths. And when this oppression is rolled back, the people there will speak as we now speak. The gentleman knows, and every man in our country knows, that the time has been—and that recently—when you could not utter your sentiments or maintain your rights in our county. We had not the ability to throw off this power. The government of the Union has driven them back; but it has not driven them clear beyond the boundary where these other people live; and when it shall do this, then these people can speak and say whether they prefer to cast their fortunes with us or their eastern brethren. I have said when the opportunity is given they will not hesitate to come with us. And if they do not? Why then, sir, they have harmed us not. Then why does the gentleman say we are begging for them? We are doing nothing of the kind. We are only dealing with them as brethren now under the pressure of a power they cannot resist. The events that we anticipate may not take place. It may not be possible for the government to drive out the forces that press them down by the time this vote is proposed; but it may be, and I hope and believe it will do it. If the movements that I have strong reason to believe are about taking place, shall be successfully accomplished according to our expectations, the thing will be accomplished. If disaster overtakes our efforts again, we must, perhaps, ourselves leave this soil as well as they. I am for doing equal justice to these people.

MR. STEVENSON of Wood. Mr. President—

THE PRESIDENT. There is a rule that prohibits a member speaking more than twice without leave of the house. I call the attention of the Convention to it without the object of applying it to anybody, particularly my friend from Wood.

MR. STEVENSON of Wood. I have no disposition to protract this discussion. Although it has been continued for a very long time, I feel like making a few remarks, more by way of explanation than anything else, in reference to a matter in which I think the gentleman from Kanawha misapprehended or misunderstood a portion of my argument on yesterday. In the course of my remarks, I undertook to convince the Convention—I do not know whether I was so lucky as to succeed in doing it or not—that in shaping the policy of this new State, it was very desirable to do it so as to invite the proper class of people from the adjoining states to make their homes amongst us. The gentleman from Kanawha, I think from the remarks he made just afterwards, supposed I intended this as a kind of reflection on the people of our own State. Nothing, sir, in the world was further from my intention; and I think I distinctly stated at the time that I believed the people who inhabit our country are just as moral, as industrious, as enterprising, and as good citizens, as could be found anywhere else. But I did remark, sir, that I thought we had not enough of them; and I think so yet; and I think any man who will divest himself of local prejudices will come to this conclusion, without thinking very long on the question; and if I wanted to convince this Convention, to instance them to one standing argument in favor of the maintenance of that position, I have no farther to go, sir, than outside of the walls of this building, around here through the city of Wheeling. But, I think, sir, I used that argument; and I think it can be used, as I did use it, without casting any unjust reflection, or making any unfair distinction between the people of this region of country—

THE PRESIDENT. The question is on the resolution.

MR. STEVENSON of Wood. This is a matter of explanation that I was at just now. It is a privileged question, I believe.

MR. BROWN of Kanawha. I desire to assure my friend from Wood that I was not at all disposed to disapprove of the argument of the gentleman. My only object was, understanding him to favor directing our policy to securing population, to say that I thought that was not the only great object in forming our State.

MR. STEVENSON of Wood. All I had to say about that was that I did not wish to make any remark here that would be considered unkind to any member of the Convention or be calculated to give offense to their constituents.

In regard to this question, sir, that is now before the Convention, I have only to say this: that after having listened patiently to this discussion in all its bearings, I have come to this conclusion, and I think a majority of the Convention has, that it is not a practical question; and I think the gentlemen who wish to introduce or add these counties have admitted that much; that while it cannot do these people any good; while the probabilities are all against a supposition of that kind, it is equally agreed upon almost all hands that it must embarrass the whole question. Now, sir, if it is not going to do them any good, supposing them to be all Union men; if, as one gentleman remarked, it would be just as difficult for those men to travel to the moon as to vote in next April—I want to know why it is that we propose to embarrass this whole new State movement; to accompany it with difficulties of this kind; to carry these doubts which prevail here (and which have advocates in this Convention) whether we have any right to act on this question of boundary at all in the way of extending the limits of the new State, with the whole question, through the legislature, and from it into Congress; and imperil, and probably in the end defeat, this whole new state movement? Now, sir, I am just as anxious for this new State as any man can be; and I do say here that if we are to proceed in this way, using one set of arguments today in favor of running to the top of the Alleghany mountains, because this is a great natural boundary, and putting these arguments up next day and knocking them down with another class of arguments, we will look ridiculous in the eyes of Congress when we apply for admission. Now, sir, such a course, with all due respect reminds me very much of one of the by-laws of one of the first temperance societies ever started in this country:

"Any member of this society who becomes intoxicated shall be fined five shillings, unless it can be clearly proved that such intoxication took place on the 4th of July or at a regular militia muster." (Laughter)

There is just about as much consistency, it seems to me, in the arguments used on the two sides of this question by the same gentlemen, as there was in the temperance principles of that society.

Now, sir, I am opposed to this whole thing of passing over the ridge of the Alleghany mountains and of taking in additional counties, unless it may be I may possibly agree to take in some two or three or possibly more, the ones embracing the Baltimore and Ohio Railroad. Further than that I cannot go.

MR. POMEROY. Mr. President, of course on this question, as it is a very important one, I call for the yeas and nays.

The yeas and nays were ordered and taken, resulting:

YEAS—Messrs. Hall of Mason (President), Brown of Kanawha, Brumfield, Chapman, Carskadon, Dolly, Hall of Marion, Hubbs, Montague, Mahon, Sinsel, Simmons, Sheets, Stuart of Doddridge, Van Winkle, Wilson, Walker—17.

NAYS—Messrs. Brown of Preston, Battelle, Caldwell, Cassady, Dering, Dille, Hansley, Haymond, Harrison, Hervey, Hagar, Irvine, Lamb, Lauck, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Ruffner, Stevenson of Wood, Stewart of Wirt, Soper, Taylor, Trainer, Willey, Warder—28.

So the resolution was rejected.

MR. STUART of Doddridge. I move that the next resolution be now taken up.

MR. VAN WINKLE. I would remind members again that the name of Frederick is accidentally omitted in the resolution. It will be considered, I suppose, as in.

The motion was agreed to, and the third resolution of the report of the Committee on Boundary reported as follows:

"RESOLVED, That the district comprising the counties of Frederick, Jefferson, Berkeley, Morgan, Hampshire, Hardy, Pendleton, Highland, Bath, and Alleghany shall also be included in and constitute part of the proposed new State, provided a majority of the votes cast within the said district, at elections to be held for the purpose on the third Thursday in April, in the year 1862, and a majority of the said counties are in favor of the adoption of the Constitution to be submitted by this Convention.

THE PRESIDENT. The county of Frederick, having been left out of the printed copies of the report of the committee by mistake, will be considered as in.

The question is on the adoption of the resolution.

MR. SHEETS. Mr. President, I have an amendment to offer to that resolution; that is to strike out the counties of Hampshire and Hardy and add them to the original list of the thirty-nine.

MR. VAN WINKLE. I do not think, sir, the whole matter is in order at present. The gentleman may move to strike them out and the question will recur on the passage of the whole; and then he could move to put them in the first section.

I would suggest, however, that it is not necessary even to move to strike these counties out here. When we come to consider the whole report, those changes, and others if they suggest themselves, can be made. They had better stay in this resolution until its fate is determined. If this is negatived, we can then add them to the other. That is to say: by a motion made by the chairman of this committee, this report was to be considered as a report of a standing committee; and under the rule for the discussion of reports, gentlemen will have an opportunity to make transfers of any kind when we come to the final adoption of the report. It would only embarrass business now to make a motion of that kind.

MR. SHEETS. I accept the suggestion of the gentleman from Wood and withdraw the motion.

THE PRESIDENT. The question will be then on the adoption of the resolution.

MR. WILLEY. Mr. President, I was waiting to hear from the chairman of the committee.

MR. STUART of Doddridge. It has been so usual to offer amendments, that I was waiting for some one to offer them; and I supposed when my friend addressed the Chair that he had one to propose. If any member has any amendment he desires to submit, I would be glad if he would do so now.

MR. POMEROY. Does the gentleman from Doddridge want an amendment simply to express his views on the subject? If he does I move to strike out all these counties except Hampshire and Hardy. I expect before this discussion closes to state the reasons why these counties should be stricken out.

MR. VAN WINKLE. In reference to this question of order; it is usual for the chairman of a committee, when any part of a report comes up to have the opportunity if he desires, to explain it; also if he sees occasion to explain the reasons which led the committee to adopt it. That I suppose the chairman does not feel necessary in this instance.

But I wish to say, further, that my friend from Doddridge seems to have misunderstood that it is also by courtesy, not by rule, allowed to the chairman to close the debate; and I have no doubt the chairman of this committee supposed he was closing it two or three times on the second resolution—but he failed to do so (Laughter).

MR. POMEROY. I will willingly withdraw the motion I made through courtesy to the chairman of the committee. I am very willing to hear the gentleman.

MR. VAN WINKLE. Your motion to amend will not hinder.

MR. POMEROY. Well, I will withdraw it anyhow until he makes his speech, so that I can offer it afterwards and he can make another on the amendment (Merriment).

MR. STUART of Doddridge. I had no set speech to make on the subject. I did suppose it was almost unnecessary to give the reasons for reporting this resolution by the committee. I supposed I would hardly get up until some member offered an amendment. But I understand now from the indications in this body, the Convention desires to pass upon this amendment—either adopt or reject it, and then gentlemen offer any substitute they choose.

I must be permitted to say that the inclinations and feelings of this committee leaned strongly towards the counties of Hardy and Hampshire so that we would hardly have embraced them in this resolution had it not been for an indication or suggestion made by one of the representatives from those counties and that was this: that the counties of Hardy and Hampshire, above all things almost, desire to come into the new State of West Virginia, to be with us as they are identified with us; but that if it is the sense of this Convention that you shall include them and exclude their neighbors, they do not think they can come. Now, I believe that was really the reason the committee classed these two counties, represented here on this floor, and always represented as loyal counties, with their neighbor counties. Now, from another indication from a member of this body from the same counties I am disposed to think these counties are divided; and "a house divided against itself"—I don't know what we are to do with it. I understand by the amendment as indicated by one of the gentlemen from Hampshire, that he desired to be cut loose from these other counties. I must admit my action would be governed very much by the gentlemen who represent these counties. If they want to be cut loose, I am for giving them that opportunity. That was my sentiment in committee; and I believe it would have been the sentiment of the entire committee if they had known that to be the wish of the parties who represent those counties.

Well, then, sir, the reason as before stated why the committee embraced the counties of Hampshire and Hardy, and classified them with these other counties lying contiguous: that we understood these counties did not desire, although they were in favor of coming with us, to be cut off from their neighbor counties; that their associations were such that it was not possible to do it. But I presume that if this body will look at the great interests we have at stake, and the interests of those people; that our interests are all identified; that our great thoroughfare, carrying our trade and commerce, passes right through them, we will be for giving them at least the opportunity of saying whether or not they want to come in. It has been understood that the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson were Union counties; and I believe a majority of them, if not all of them, on the ordinance voted against it. There may be some few of the counties that did not; but if they did not, it was because they were overrun by the soldiery of eastern Virginia, and had not the opportunity of voting or expressing their sentiments. They were afraid to do so.

Now, if we are satisfied in our minds that these people desire to be attached to the new State of West Virginia, all this resolution proposes to do in the world is to submit the question to them; and if they say they want to come with the new State, why, of course we will permit them to come in. It will not only be for their interests, but it will be for our interests. Now, I for one member of this body, and even one member of that committee, would have been willing and desirous to include those people peremptorily within the boundaries; because I look upon it that almost our existence depends on that thing. Self-preservation is the first law of nature; and I do not see, Mr. President, if we cut ourselves loose from those counties and let them remain in the old State of Virginia, with her unfriendly legislation towards us, what we are to do without them. How would we get along? It is well known that in a majority of our northwestern counties all our trade and commerce and very near all our travel, is over the Baltimore and Ohio Railroad. Now, sir, unless we have the control of that road what is to become of us? Do you not see? The eastern portion of our State has always been disposed to unfriendly legislation towards us; and now when this excitement is up, and we are forming a new State, and cutting ourselves loose from the old state—I appeal to the members of this Convention, what they think will be the legislation of eastern Virginia towards us in regard to this great improvement, to which every vital interest we have is second. Now, sir, this resolution embraces some of the valley counties not exactly bordering on this Baltimore and Ohio Railroad; but their interests are so identified and interlocked with the counties bordering on the road that it is almost impossible to separate them. There is the road passing up from Harper's Ferry through the counties of Jefferson and Frederick to Winchester, with a small gap of some sixteen or seventeen miles necessary to connect with Strasburg, and then they have a line of road right up through those counties that would carry them down to the Baltimore and Ohio Railroad, their natural channel of travel and trade. But if we cut them loose they are driven from this natural course of commerce and trade. They are forced to operate against the laws of nature itself. You compel those people to look for their trade to eastern Virginia—to Richmond and Norfolk in direct opposition to their interests. But this committee supposes, sir, these people would look to their own interests, would desire to come to West Virginia where their interests are, and we looking to their interests would desire to have them here. That was the reason we embraced them and want to offer them an opportunity of saying whether or not they desire to come. I see no impropriety in it; but if we do not give them this opportunity, the argument I used on the floor a few moments ago on the other resolution will come into play; these people will array themselves against our interest here in getting the new State; they will band themselves together and say to the Congress of the United States that their interest, their every interest, is identified here, and that they are cut loose and left to the unfriendly legislation of eastern Virginia, and that they can hardly survive it. We will have to change our boundaries. Congress will never admit us without changing it. This is a great thoroughfare and we leave it in an unfriendly state at present. I am like my friend from Monongalia; I have every reason to hope, and I am of the firm opinion that this rebellion will be put down; but there is nothing I have learned more surely than that nothing is impossible. We may possibly be mistaken about this thing; and, as I have before remarked, wise statesmen legislate for any contingency that might possibly ever arise. Now, sir, looking to this matter; looking to our interests, and to the interests of these people, it does seem to me we will at least give them the opportunity of saying whether they want to come or not. If you do not want to militate against the interests of the State, and the prospect of getting it through Congress, I am firmly of opinion that it is necessary to leave the question with these people to let them say whether they want to come in or not. It will not be an impediment but it will aid us in getting our new State.

MR. CARSKADON. Being a party interested in the section now under controversy, I feel it due to my constituents to give my reasons for the course I have taken in regard to these counties. The chairman of the committee has said he had information—which I gave him, I admit, that I believed my constituents of the county of Hampshire were opposed to coming in unless the same invitation was extended to the surrounding counties. We lie there together. We have a community of interest; and if we are to be taken in without those other counties having the privilege of coming in, it as far as I am conversant with the views of the people, met with their disapprobation. They wish to go to the Blue Ridge or to not go at all. We live together in a common interest, and the Baltimore and Ohio Railroad is our outlet to market, and if we are cut off there with but two counties, we know that then we can get no internal improvements from the government of West Virginia. They will not legislate for us on that side of the mountain. It is perfectly natural that there being but two counties we need never expect any legislation from them to our particular advantage. Our people, the Union citizens of Hampshire are desirous, almost to a man, to go into the new State; but they wish the same invitation and chance extended to the surrounding counties; and there are strong reasons why they should be. If the counties of Hampshire and Hardy have delegates here, the counties of Morgan, Berkeley, and Jefferson certainly would have had if they had had the proper opportunity; from the fact that Berkeley gave something like 800 majority against secession, the county of Morgan as I said cast 300 and upwards, and Jefferson would have given a majority against the ordinance had it not been for the Confederate troops stationed in Harper's Ferry, some 7,000 or 8,000, at the time of the election. Well, if Hampshire and Hardy, which did not give a majority against the ordinance of secession, are anxious to be in, will it not as a matter of course be the desire of the counties that I have just mentioned to come in? And I should think it would be very unjust to those counties and to the county of Frederick, and the others named in the section, not to have an opportunity to express their views on the subject. I am opposed to forcing these counties in. I believe it is as the gentleman from Monongalia said the other day, a violation of a fundamental principle to force them to come in and live under an organic law which they had no say in making, and not even a chance to remonstrate against. Therefore I am opposed to forcing them in; and I think the proper plan is to adopt the resolution of the committee and give them a chance to make known their wishes on the subject.

As to the expediency of taking in or leaving out those counties, I think it enhances, as the gentleman from Doddridge has just said, largely our chance of getting the State admitted by Congress, by the admission of those counties. He claims to have originated the idea, but I had it put down last night—I do not know when he thought of it first—of the petitioning of those counties if left out. And I will tell you I am firmly convinced they will petition to Congress to stop the whole matter until they have a fair opportunity to say whether or not they will come in. And gentlemen who urge the expediency of leaving them out will find that a mistaken idea. And I tell you petitions from counties as loyal as the counties of Berkeley and Morgan will have weight in Congress; and there is no help for it; if they are left out I am satisfied they will petition Congress for admission into the new State; and the whole matter will be delayed until they can express their views on the subject.

And as to the negro population in those counties, I cannot see the great bugaboo in it, as some see. If we had taken in a great portion of the slave population, as the gentleman from Wood said, we would have had but 8½ per cent. And is it to be supposed that Congress will look at that as any great obstacle in the way of a new State? Or is it to be supposed that the legislation of a state when there is such a vast majority of white population will be such as will prejudice it in the eyes of the general government, supposing them to be opposed to the institution of slavery? I think not, sir.

Now—

THE PRESIDENT. The question is on the adoption of the resolution.

MR. CARSKADON. Well, sir, if I am wandering I am obliged to the Chair.

I am in favor, as I before stated, of taking in the whole section, or table C, I believe it is, as embraced in that resolution. I am in favor that they shall have the privilege of saying—and I think it more than probable that they may say before the third Thursday in April—that they shall have an opportunity—the great majority at least—of expressing their views on the subject. Therefore, I would rather they should stand as they do in the section, with that chance; but if gentlemen persist, and it is the sense of the house, to take out the counties of Hampshire and Hardy, they can just use their own pleasure as regards the matter. I believe the constituency which I represent would rather be out than in unless those counties lying along the Baltimore and Ohio Railroad and contiguous would have an opportunity to vote on the question.

MR. POMEROY. Is the question simply on the adoption of the resolution?

THE PRESIDENT. Yes, sir.

MR. POMEROY. The reason I wished to submit an amendment at a certain time was, for the express and direct benefit of the gentlemen from the counties of Hampshire and Hardy and the people they represent. If they are willing that their cause stand or fall, if that is the expression of these gentlemen, with the whole resolution, why then of course we are ready to proceed with the discussion of the resolution; and although I made the remark in a playful manner, (though partly in earnest), of course in some way my friend from Doddridge will have an opportunity of discussing the matter without the amendment I wished to offer for his benefit. And I would like to offer this remark, and I would be very thankful to the Chair if he would call me to order if I get out: I believe it is legitimate and right and proper in all deliberative bodies in presenting the arguments that seem in favor of any side of a question under discussion, to answer, if we do it in a respectful and kind and gentlemanly way, the arguments adduced by the gentlemen who differ with us. I believe the Chair will so decide. Well, then, I want to answer what I conceive—

THE PRESIDENT. The Chair would, however, make this remark: that he would be thankful to gentlemen not to pass over any more ground gone over in the early part of the discussion than they can. The range has got too wide; and we are trying to restrain and bring it in.

MR. POMEROY. I think that is a good idea.

MR. VAN WINKLE. The difficulty arose yesterday on amendments. Now, it strikes me, sir, when a question comes up on the passage of a resolution, it necessarily opens all the ground connected with that resolution. If the question was simply to strike out one of those counties the range of debate would be improper. Of course every gentleman must judge for himself. He should put the proper restraint on himself and not make it necessary for the Chair to restrain him. The question is a different one when it presents itself on the passage of a whole resolution or on an amendment.

THE PRESIDENT. The question on the passage of a resolution does give more range necessarily than on an amendment.

MR. POMEROY. But I understand our President to wish to draw the reins a little so as to save time.

MR. VAN WINKLE. The President has no right to draw the reins more than the rules require him; and I was simply calling the President's attention to the fact that the range yesterday became peculiarly improper because it was on a single amendment: although I do not pretend to judge; that is for the Chair; but I only wished to suggest that there may properly be a wider range when the question comes up on the passage of a resolution.

MR. POMEROY. I conceive, Mr. President, that although this question presents a different idea at the outset, we will necessarily have to travel a good deal over the old beaten track. We will have to present the same reasons why these counties should not be received; and the same will be presented, I have no doubt why they should be. But I think I will call up before this discussion closes, what the gentleman from Doddridge would call a new idea; and if I can get hold of that idea, why perhaps I can show my objections to the resolution without going over the old ground.

Now, here is an argument that I wish to reply to: that if the people of West Virginia go up in due form having complied with all the requisitions laid down in the books and ask admission by Congress, there are a few men over in this district that will array themselves against us and keep us out. I am willing to admit that they are very "honorable men"; and they may be men of wonderful influence; and certainly they must be if they will be able to array themselves with such power that they will keep us out of the Union in that way.

The gentlemen say that another thing they wish to throw out an idea about is this: that suppose for a moment—although they say they do not hardly think it will be so—that we should all be disappointed about the putting down of this rebellion, what a deplorable condition we would be in then if we do not have the friendship of these people over here that it is proposed to admit. I ask the gentlemen, did you read the message of John Letcher in which he says the Ohio river is the boundary of Virginia now and will be still. If the rebellion succeeds, do you imagine that the boundary is going to be at the Alleghany or the Blue Ridge? If they have power to suppress the strong arm of the United States, why they have power to extend their boundary not only to the Ohio river but over it. And he says in that same message—which I hope gentlemen may have looked at—that the army ought to fight, not on the banks of the Potomac but on the banks of the Susquehanna. Why, they would extend their power and dominion everywhere; and I would not give a copper for the new State of West Virginia, if they succeed.

But, sir, the arguments used here by the gentlemen opposed to receiving these other counties will apply with the same force to a part of these counties, or with additional force. Take for example the county of Alleghany. Who ever represented her in this Convention? Who ever came here for admission? And in addition to her hostility shown by her vote, we have the fact brought forth, that that county incumbers us with a large amount of original debt, if it was possible to get her in; and therefore, I am opposed to taking her in even if she were willing. I believe too it would be doing injustice to that part of the State, the counties lying near them, in regard to which we have already voted that they shall not come in. Our boundary is fixed—a great natural boundary, as has been said, the boundary formed by the Alleghanies. Any man can see at a glance that it appears to be the regular and natural boundary. Now, why should we go over this and carve out counties? Because if I count these counties correctly there are ten of them. It would require six of them to control this matter and bring the whole ten in; and if they stand or fall together, why they must all stay out unless six vote to come in. Why shall we go and make a line of this kind? What kind of a boundary does it give you? But I confess I have no fears of their coming in—of their opening polls. Who ever heard of a man in Pendleton or Bath expressing the opinion that he would like to belong to this new State? Or Highland? Here are counties that we have had no expression from and the proposition is to take the vote, when we know it is impossible for a vote to be taken, even if we did not know they are so intensely hostile that if the opportunity were ever so favorable, they would spurn our proposition with contempt.

There is another objection I have to this matter. If it is a matter of necessity for us to have them, a matter of vital necessity, why not throw the line around them and bring them in at once? That has been the doctrine—the doctrine of coercion: that we had a right to take them, and power to do it. And if we are sustained by the Federal Government, we have power to do almost anything. That is the doctrine: that we have the power. And why not throw the arm of power around them and coerce certain people in? Why not coerce them all in? I wish I had a table of statistics which I think I have in my room to show what the vote of these counties is; because the population of a county is not in all cases a true criterion of its vote. I believe the general way is one out of every five. If that be so here are counties that would give a very large vote, if that vote was out. Does any person suppose Frederick with the town of Winchester in it—or city, I believe they call it—that the one-third, or one-fifth, or one-ninety-ninth part, of that vote will be cast on the third Thursday of April in the circumstances in which the people are at present situated? We have heard a great deal about the army; and I have almost been led to believe that this army in rebellion is omnipresent. But I do think they have a large portion of it in this town of Winchester. And are they going to permit polls to be opened there and for miles of them? There is no other force there to drive them back, and permit at the different precincts in Frederick a poll to be opened to take the vote. Who are going to be the commissioners to open these polls? Can they do it secretly? The legislature, it is said, is to provide for the commissioners: who are the men who are going to open the polls in Frederick county? Is the same not true of Jefferson? Are there any points in that county where a vote could be taken? Is it not true that there are hostile forces in many of those counties that will prevent this expression of opinion that is recommended by this committee?

But then let me say—and I believe the rules say a member may speak twice on a question—but let me just say that I find in viewing this matter fully that there are over 12,000 in these counties. They then say: we will be no barrier in Congress. Who will be there to explain that away? Who will be there to tell Congress that they do not want to build up and foster this hostile element there? I would like to know who is the representative of that district in Congress. We have to take all these things into view. These things were discussed ably in the other convention; and they came to the conclusion that these counties ought not to be included, unless they should within an appointed time express a desire to be included. They have not expressed such desire.

For these reasons I am opposed to the resolution. But as the President has suggested that we shall not travel over the old ground I will give way, hoping that we may not act hastily and inconsiderately in regard to bringing in such large counties as these when it is not practicable to do so.

MR. MAHON. Mr. President, I move that the Convention now adjourn.

MR. SINSEL. I would ask the gentleman to change his motion so as to meet hereafter at 10 o'clock.

MR. MAHON. I will withdraw my motion.

MR. SINSEL. I move now we adjourn to meet hereafter at 10 o'clock instead of 11 o'clock.

MR. HALL of Marion. Would not we accomplish more by meeting at the hour we do, and instead of half-past three meet at about half-past two in the afternoon.

MR. VAN WINKLE. I would suggest that the hour for meeting in the afternoon is fixed so as to accommodate those members who are also members of the legislature. The proper form of that motion is, I suppose, that the hour of meeting hereafter be ten o'clock in the morning.

THE PRESIDENT. The Chair thinks the best form would be that we now adjourn to meet hereafter at a certain hour.

MR. VAN WINKLE. Let us fix by a distinct resolution the hour of meeting, and then we can move to adjourn.

The motion of Mr. Sinsel, modified in accordance with the suggestion of Mr. Van Winkle, was agreed to.

MR. MAHON. I now renew my motion to adjourn.
The motion prevailed and the Convention adjourned.

XIII. WEDNESDAY, DECEMBER 11, 1861.

Prayer by Rev. Joseph S. Pomeroy, member of the Convention.
Journal read and approved.

THE PRESIDENT. When the Convention adjourned it had under consideration the third resolution of the report of the Committee on Boundary.

MR. BRUMFIELD. Mr. President, I offer the following:

"RESOLVED, That when this Convention adjourns on Saturday, the 21st of December, that it adjourns to re-assemble on the 7th day of January, 1862, in the city of Wheeling."

The resolution was laid on the table.

THE PRESIDENT. The question is on the adoption of the third resolution of the Report of the Committee on Boundary. Is the Convention ready for the question?

MR. BATTELLE. Mr. President, I want to offer an amendment. I move to strike out the counties of Pendleton, Highland, Bath and Alleghany. I must apologize to the Convention for not having matured my proposition. I did not anticipate the vote would be taken so early. I believe that is about what I want: to strike out the counties of Pendleton, Highland, Bath and Alleghany.

MR. WILLEY. Mr. President, would it be competent to divide the question, take it in parcels? I might be in favor of striking out some of these counties and not others. I am in favor of striking out Alleghany and perhaps Bath.

THE PRESIDENT. The Chair is of opinion that the amendment might be amended by proposing to strike out the two counties.

MR. POMEROY. I think that if my friend from Ohio would just withdraw that, I would be very much in favor of the suggestion of the gentleman from Monongalia; and I believe we would really save time to take the vote first on striking out a particular county, say the county of Alleghany.

MR. BATTELLE. I have no objections to the suggestion, at all, Mr. President. I withdraw the amendment.

THE PRESIDENT. (To Mr. Willey.) You consent to the withdrawal?

MR. WILLEY. Certainly, sir.

MR. BATTELLE. I may say briefly, for one I am desirous, or at least willing, that the railroad counties should be identified with this new State, and Hardy which is not a railroad county. I do not offer that suggestion on the ground of any apprehension of a permanent separation of the states of this Union. I believe most heartily that we of western Virginia and the Union are in the same boat together; and we sink or swim together; and if the Southern Confederacy is to be established, our new State is not worth the paper on which its Constitution is written. That has been my conviction from the beginning and is now. But, still, notwithstanding we expect eastern Virginia to become in a certain sense loyal, yet it will be her policy, I apprehend, in the future, as it has always been in the past, to embarrass this great line of improvement, which is so indispensable not merely to northwestern Virginia, but I undertake to say to all West Virginia, in a very important sense. I desire, for one, to have every rod of that great improvement within the lines of this new State: that is to say, provided the people are willing to be so included. I am at least willing to give them an opportunity; and I am the more inclined so to do because the indications of coming events point now in the direction that they may have, soon perhaps, the opportunity of expressing their sentiments.

MR. WILLEY. I therefore propose to strike out the word "Alleghany" in this resolution. I will state in very brief terms the reasons why I think it ought to be stricken out. In looking over the map it will be seen that it may be stricken out without disturbing the harmony of the new State, and the regular boundary, very materially at least. There is another consideration, sir; it seems to be connected with eastern improvements and with eastern Virginia, perhaps, more than it is with western Virginia, in consequence of those improvements. And there is still another consideration; and that is that by including it we not only do violence to the wishes of the people of that county, but we would saddle upon ourselves a considerable part of the public debt of Virginia without any corresponding benefit to ourselves.

These, in brief are the reasons why I think it ought to be stricken out.

MR. STUART of Doddridge. Mr. President, as these counties are to be stricken out in detail, as a matter of course, we will not propose to argue the question on every motion. I would simply say to the Convention that the county of Alleghany was, with us, loyal, and would have been represented here if it had been at all practicable. It sent a Union delegate to the convention at the city of Richmond; and he stood side by side with us through the whole contest—voted against the Ordinance of Secession there, and stood by the side of my friend from Monongalia. Well, sir, if we are to take that as an indication of the sentiment of that people, they are with us; and this resolution now only proposes to that old representative in the Richmond convention who stood by us, who fought with us, who voted with us, who did all he could for the Union—it only submits to that old man, friend and associate aider and abettor in a good old cause: Do you want to come with us or do you not? Now, that is all it asks. That is my reason for voting against the proposed amendment of the gentleman from Monongalia.

MR. DERING. Mr. President, I concur most fully in the amendment; and I do, sir, because acting here in a representative capacity I am representing my constituents in opposing any additional territory to this new State. I think, sir, that we endanger this whole movement by adding Alleghany county or any of those counties spoken of, that the gentleman from Ohio proposes to strike out, to the territory of our new State. And, sir, we have intimations from a high quarter this morning that any additional territory beyond that which was provided for in the August convention, will embarrass the action of Congress with reference to our admission into this Union.

MR. VAN WINKLE. Will the gentleman be kind enough to inform the Convention what the authority is?

MR. DERING. Our member of Congress, sir, from this district.

I, sir, would be willing to take in the tier of counties lying immediately contiguous to the Baltimore and Ohio Railroad, believing that that great artery of trade, sir, should be under the control and legislation of western Virginia—not to be subject to the action of the legislature of eastern Virginia. We all know sir, that they will do everything to impede the prosperity and progress of West Virginia; and that in their legislative action they would do everything they could do to cripple the Baltimore and Ohio Railroad, that great artery of trade. Therefore it seems to me it should belong exclusively to West Virginia; and it should be under our control and subject to our legislation, and not that of eastern Virginia.

I believe, sir, that any action looking to the annexation of territory that we are not bound to have will produce delay. I believe, sir, that delay is dangerous; for if we should wait, sir, until this rebellion is put down, and until eastern Virginia is made to bow the knee and acknowledge the supremacy of the Federal Government, they, sir, never will consent to part with West Virginia. We, sir, are too good a tax-paying people; and they, sir, will find themselves impoverished, with a heavy debt on hand; and they will look to us to help them to extinguish that debt and keep up the government. Eastern Virginia, sir, is being literally crushed out. They will be bankrupt and unable to pay even the ordinary expenses of their state government. They will be unwilling, sir, to lose western Virginia; and will want to hold her and make her tributary to their coffers and to make her help pay the debt that they have been incurring.

Sir, in this discussion—and I have listened to it with interest; I have been instructed and profited by it—throughout this whole discussion, sir, we have been treading upon debatable ground. We have been skirmishing, sir, upon dangerous ground; and I do trust, sir, that that vexed question which has brought the country down to its present deplorable condition, will be ignored in this Convention; and that we will set and fix and determine these boundaries so as to cause as little trouble on this subject as we can possibly have. Let us not, sir, endanger the passage through the Congress of the United States, by annexing a large amount of this rebellious element of secession and the surroundings connected therewith. Let us steer clear of it, sir, and, in the language of the gentleman from Marion, let us not hunt up territory out of which to make a new State, but let us adhere to the ordinance, sir, which convened us here, and make a Constitution for the thirty-nine and the few counties immediately contiguous to the

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work running into this county of Alleghany entails the debt of its cost upon the State embracing that county. Covington is in it, the present stopping point; and I believe the connection with the James River Canal is not far off. I do not know, sir, that there is anything so particularly desirable in the county of Alleghany or Bath or Highland, except this: that we get a better boundary, a straighter one than without, by taking in these counties, provided we take in those north of them.

But in reference to the motion that was made and withdrawn, to strike out four counties including Pendleton, I think there is something to be said, and I say it now while Alleghany is up because it naturally joins itself to some of these other counties; and as good reasons would exist for striking out Bath and Highland as there would for striking out Alleghany, if the object is merely to get rid of territory. Then I suppose the same reasons that apply to Alleghany apply to the other two; and as one gentleman has intimated by a motion he made and withdrew, he thinks Pendleton is in the same class: which I do not.

Before I go any further, permit me to say that the great authority that has been quoted here does not strike me as being a great authority—or as being any authority whatever. It does not strike me as any evidence of the opinion at Washington. The gentleman has not been there long enough to gather opinions. And lastly, sir, the opinions of individual members of Congress, before the question is presented to them, before they know its bearings and circumstances—is worth just nothing at all. I hope gentlemen are not to be deterred, even by this authority, if it is a great one, from doing what they think is right and just towards the new State in the premises. That gentleman, avowedly, during the last summer was apprehensive that there was to be a separation of the states; and his conduct in reference to the new State was avowedly dictated by that consideration: that we should hurry on and make a boundary by which the grand line of separation between the North and South should be drawn. Well, sir, as I never had an idea of the separation of the North and South, it is an argument that weighs nothing whatever upon my mind.

In reference to this matter, sir, we are to do as in reference to all other matters of human action men ought to do, what we think right; and leave the consequences to those who have the disposition of them. If we are satisfied the prosperity of the new State will be promoted by the addition of certain counties; if we are satisfied that circumstances and considerations such as have been frequently mentioned here demand the addition of those counties; that the interests of any portion of the new State is to be promoted; that there is a fitness in the addition of these counties, why, sir, I hope we will go on and add them and not be deterred by any ambiguous giving out from members of Congress, who are only men after all, and who cannot pretend to say, when the question has been agitated formally in Congress, and indeed has not yet been made, that they have any better opportunity of knowing than we have. I believe, sir, that Congress is composed of men pretty much like ourselves. Many of them are men of excellence and good judgment, some average and some rather indifferent. They will be governed by circumstances, by the arguments presented, the fitness of things and such other considerations as operate on all men.

I only wish to say, sir, in addition, that if we are to take any part of these counties and exclude another, there is one consideration which should induce us to retain Pendleton at least. If gentlemen will look at the maps, they will find a ridge of high land, forming the boundary of Highland county; and the rivers in that valley, between the Shenandoah mountains and the Alleghany run north and south through Highland county. Therefore, it seems that Pendleton would be necessarily connected with the counties north of it; and to separate it from them would not do it justice. It is a county that is free from one objection, at least: it has very few slaves. It therefore seems that the people in that county, being somewhat homogeneous with those north of them are more likely to adhere to us than the other section of the State. I should consider there would be no doubt of it. They were left out when the original boundary, including the 39 counties was formed because it made an excrescence from the boundary. It lies east of the Alleghanies; whereas from its interests and its opinions, the character of its population, and many other considerations of that kind, it was thought to resemble very closely the original thirty-nine.

I do not know, sir, in reference to the consideration that this public work, the Central Virginia Road, and the Ohio and Covington Road as it is called, is in Alleghany, and that it passes also through a corner of Bath county—I do not see, besides this—and gentlemen must weigh that for themselves—that there is any good reason why these counties should be left out. There is a mountain range, which includes the Shenandoah mountains—I think they are called—running from the lower point of the Alleghany and following the eastern border of all these counties until it loses itself in Hardy. It would make, therefore, a continuous and very satisfactory mountain border.

These are considerations, of course, on the one hand and on the other; but I think we ought to have reference particularly in grouping these counties, and in taking them in or leaving them out, to their situation in reference to one another; and what I have stated in reference to several rivers seems plainly to indicate that Pendleton belongs to the northern group.

MR. WILLEY. Mr. President, I simply rise to state that as to the counties of Bath and Highland I am perfectly indifferent. I accord fully with the views of the gentleman from Wood as to the propriety of including Pendleton within this proposed territory, if we include any part of it at all. In addition to the reasons which he has already very forcibly presented, if you will only look upon the map you will see that unless it be included there will be but the single county of Hardy connecting the thirty-nine counties with this territory below, which we propose to include; and that by every consideration of geography and convenience and I believe of homogeneousness of population, climate, commerce and industry, Pendleton should be included as much as Hardy, or any of these other counties. At present, I am only interested in excluding Alleghany, from the consideration which is forcible to me, of their being connected with these improvements terminating on the eastern seaboard that their interests would attract them thither and that their inclinations would not be to unite with the new State; and that in the vote which they would give, provided they are included in the proposition to include these counties, it would imperil at least by the number of one the majority of counties, if not of population, required to include those counties.

MR. BROWN of Kanawha. I desire, Mr. President, to explain the vote I shall give. As a new state man I had a very strong desire, indeed, that this State when presented to Congress should be presented in a form that had the appearance of equality and justice to all the people of it. To continue the boundary line a parallel line nearly with the Ohio river carried with it something of that appearance; and if we cross the Alleghany to continue that parallel line all along the southern border of the State, on the eastern slope of the Alleghany; and if—as I desire we should continue that line with the Blue Ridge, I believe, sir, that the character of the State, the wealth of the State, the prosperity of the State and that of the people would all be increased. I regret exceedingly that the report of the committee should have been departed from in any particular. But since it has been the sense of the Convention that we are to make a discrimination between the half of this tier of counties lying along the Baltimore and Ohio Railroad and that lying along our southeastern border and since the disposition certainly is not to go to the Blue Ridge, that great natural boundary and defense, but that we shall not even continue that second natural line of mountains that split the Valley of Virginia into nearly two equal parts—when it is proposed to make a distinction between our brothers lying near our borders, I confess, sir, that I feel myself impelled to continue the doctrine and make no discrimination anywhere, and that if we cannot have a whole line homogeneous equal and parallel, we then ought not to take any. But, I believe, sir, that by taking a part and throwing off a part, excluding positively and with a prohibition one section and extending the privilege to the other is such a discrimination as must arouse in the minds of our people that sort of hostility that may tend to imperil the prospects of success of our new State. And with these views, I shall feel myself compelled as I announced in the beginning that unless the whole line is taken we should take none. But in doing this I even hope yet this Convention will see the error of the course pursued, and will when these counties have been one by one voted out return and admit the whole tier.

MR. STUART of Doddridge. I only rise to give my friend on the right here the parting hand and bid him farewell. I have been actuated here and influenced by honest motives. My motto is that of Davy Crockett:—

THE PRESIDENT. I would remind my friend from Doddridge that the question is on the adoption of the resolution.

MR. STUART of Doddridge. We will come to it, sir—"be sure you are right: then go ahead." Now, I have tried to convince my mind that I am right, and I still think I am right; and I am going to hold on to the principle. And I must say to my friend on the right that I have looked upon him as one of the steadfast, firm, immovable members here that was actuated by principle, and that was that we would submit the question to these people, and if they thought their interests identified with us and they desired to come with us we would let them do so. But as I say I can give my friend the parting hand. I suppose we will be found minus but one perhaps on the floor.

Now, sir, as to the argument of the gentleman from Monongalia and the high authority he quotes against this resolution here, I must be permitted to say that for my life I cannot see how it is that submitting this question will militate against our interest. Recollect, sir—I want the gentleman to recollect—that this question, that our mission to Congress, does not go before Congress until it is ratified and adopted by the people. Now is not that the case? Well, sir, if the people vote for this Constitution and the boundary they want and come before Congress asking to be received as a State, is this gentleman of high authority going to oppose it because we included people that are homogeneous with us and want to come with us?

Another argument, gentlemen, in favor of the amendment as proposed by the gentleman from Monongalia was that the old State of Virginia was now greatly in debt; that it was insolvent; that debts were hanging upon the people of eastern Virginia that never would be paid; that they were chained down, hampered. Now, sir, I think sympathy should move these gentlemen to give these people who have always stood by us, stood up with us, advocated our rights, fought side by side with us—sympathy at least would say we should extend to them the privilege of extricating themselves from this bondage and tyranny that seeks to press and weigh them down, as admitted by the gentleman himself. What will you do? Say to your brother situated just like yourself: you shall always be in that situation. Now let us let them come out. They are not to blame for it. They have never incurred any debt of Virginia. They have aided in it; and they are seeking, perhaps, to extricate themselves from it and come with West Virginia.

It does seem to me, sir, that the gentleman's arguments would convince me, if nothing else would, that we ought to let these people come if they want to.

The question was put upon the motion of Mr. Willey, to strike out "Alleghany" and decided affirmatively.

MR. HERVEY. I move to strike out Jefferson, Berkeley, Morgan, Pendleton, Highland, Bath and Frederick. I except what are included in the original ordinance. The sense of the Convention should be tested upon an adherence to the ordinance itself. That appears to have been the principle that has actuated a majority of this Convention heretofore; and I feel disposed to test the sense of the Convention on that question now.

MR. WILLEY. Mr. President, that brings up the whole question, sir, because if this amendment prevails the main design of the resolution is destroyed. We have already stricken out Alleghany and it is now proposed to strike out all the other counties of this section except Hampshire and Hardy.

Mr. President, differing from this Convention, as I do, in regard to its authority and its proper power to include counties outside of the thirty-nine against their will, whether they come in by way of minorities in a section or are included in a map by sections, without giving them the privilege of voting at all, I will yet, sir, bow to the decision of this Convention which has established by its vote the sense of this body as to the right to include counties contrary to their consent; and I shall argue the question, in the few remarks which I propose to submit, with this fact in view, not because, sir, after listening to all the able arguments of gentlemen on the other side, I am any more convinced now than I was in the beginning as to the right of this body to include any county under any circumstances or by any process contrary to the will and to the vote of the people of that county. I had prepared propositions, sir, which under the circumstances would have suited me better; and I do not know that I could better present my views in regard to the proper manner of including these counties, and especially by way of suggestion to the members of this body provided this proposition should fail than by reading the resolutions I had intended to offer. If this proposition does not prevail, I shall offer, sir, if it does not delay, the following resolutions:

"RESOLVED, That the counties of Pendleton, Hardy and Hampshire ought to be included in the proposed State of West Virginia: provided a majority of the votes cast in the said county of Pendleton, and also in the said county of Hardy, and also in the said county of Hampshire, at elections to be held therein, on the day of , 1862, is in favor of the adoption of the Constitution to be submitted by this Convention."

If all these counties then vote in favor of the adoption of the Constitution, we shall have added to our new State the tier of counties composed of Pendleton, Hardy and Hampshire. So far so good.

Second:

"RESOLVED, That the county of Highland ought to be included in the said State: *provided,* a majority of the votes cast therein, on the day aforesaid, is in favor of the adoption of said Constitution; and *provided,* further, that the said counties of Pendleton, Hardy and Hampshire shall also be included in the said State as aforesaid."

* * * * *

Still obtaining the consent of all these counties and an unbroken territory contiguous to the present boundaries of the thirty-nine.

Third:

"RESOLVED, That the the county of Bath ought to be included (I am not particular about this) in the said State: *provided,* a majority of the votes cast therein, on the day aforesaid, is in favor of the adoption of the Constitution aforesaid, and *provided,* further, that the said counties of Highland, Pendleton, Hardy and Hampshire shall be included in the said State on the conditions and in the manner aforesaid."

Fourth:

"RESOLVED, That the county of Frederick ought to be included in the said State, *provided,* a majority of the votes cast therein on the day aforesaid, is in favor of the adoption of said Constitution, and *provided,* further, that the counties of Pendleton, Hardy, Hampshire, (I do not care whether Bath or Highland is included or not) shall be included in the said State in manner and form aforesaid."

Fifth:

"RESOLVED, That the county of Morgan ought to be included in the said State: *provided,* a majority of the votes cast therein, on the day aforesaid is in favor of the adoption of said Constitution; and *provided,* further, that the said counties of Pendleton, Hardy, Hampshire and Frederick should be included therein as aforesaid."

I have resolutions including Berkeley and Jefferson on the same terms and conditions: that is to say, provided this tier of counties vote themselves in regularly by contiguous territory, up as they come to the counties down the Railroad until Jefferson be included.

MR. VAN WINKLE. Why does the gentleman leave Morgan out of that connection?

MR. WILLEY. I do not, sir.

MR. VAN WINKLE. Is not Morgan as much ours as Hampshire or Hardy? There is a continuous range of mountains that forms the boundaries of those three counties.

MR. WILLEY. I have included it, sir. I did not read all the resolutions. I simply remarked that I had other resolutions including Berkeley and Jefferson on the same terms and conditions. I read the resolution for the admission of Morgan.

MR. VAN WINKLE. I understood that, sir, but I wanted Morgan put on the same vehicle as Hardy and Hampshire.

MR. WILLEY. I have no objections to that. The object I have in view is apparent to the Convention, I trust.

MR. POMEROY. If the gentleman would just stop for a moment, I think we would reach this matter much better than by the plan suggested by him, if we offer an amendment to the amendment of the gentlemen from Brooke.

MR. WILLEY. If the gentleman thinks so, I will give way.

MR. POMEROY. I would, then, offer this amendment: that the county of Bath be stricken out: believing that the point will be reached sooner.

MR. HERVEY. That motion is not in order, sir.

MR. WILLEY. I had just remarked that I had not changed my opinion at all in regard to the legal authority of this body to include any county against its will; but at the same time I know the fact that as a member of this body, it is my duty, as it is my pleasure, to bow with perfect submission to the well argued and well expressed opinion of this body, as respects its right to include territory without the consent of the counties. And therefore it is, sir, that I say I had my views of the case, merely by way of argument and suggestion to gentlemen, if they see proper to reconsider their action; but until this Convention has decided that it has not the rightful authority to include counties without consulting them I must regulate my conduct entirely by the decision of the Convention heretofore had in the premises. Therefore, I do not offer these amendments now until the decision of this body is heard upon the resolution before it. It would be bringing up the very question that has already been ably argued and at length, and decided contrary to the right which I claim as the true ground of our action. I must conform to the expressed wish of the Convention heretofore had.

And now, sir, I make this proposition: that we want all the territory to be included in this new State embraced within the counties of Pendleton, Hardy, Hampshire, Morgan, Frederick, Berkeley and Jefferson. I believe the inclusion of this territory is essential to the welfare of this new State. I believe that if we cannot include this territory, our new State enterprise will be crippled in all its future efforts to increase in population, in wealth and in power, as a State. Sir, the Baltimore and Ohio Railroad is the great artery that feeds our country. It conveys into our center, or by its ramifications of necessity infuses through the entire body politic of this new State the life-blood of its existence. We cannot do without it. It has been intimated by gentlemen that that Road is made and will exist and still extend its benefits to the new State although we shall not include these counties within the limits of the new State. Sir, it may be true; but I beg gentlemen to remember another fact: that unless this whole line of railroad is included in this new State its operations and its benefits will be embarrassed to the full extent of the power of eastern Virginia legislation; its utility will be crippled; it will be taxed as far as reason and decency—and further than there—will allow; and every influence of eastern Virginia will be arrayed against the successful working of this road. That has been the case hitherto, Mr. President. We have but to advert to the history of the legislation of Virginia to see the fact in time past. Every available artifice has been resorted to to cripple the energies or utility of that railroad. And, sir, when we shall have separated from eastern Virginia, with feelings of hostility intensified by the conflict that is now going on between us, will it be likely that the hostility of the legislation of Virginia towards this road will be any less hereafter than it has been heretofore? Will it not be increased? Have we not reason to apprehend that it will be increased from these considerations?

Again, sir, Baltimore is the competitor of the favorite cities of eastern Virginia. It is the competitor, for the commerce of the Northwest and Southwest, of Richmond, and of Norfolk, and of Alexandria, and of all the ports of trade and commerce within and along the bay, and anywhere in eastern Virginia; and, therefore, for the very purpose of building up their own interests and of crippling the prosperity and overpowering influence of the great competitor in Maryland, Baltimore, they will be induced to interpose all possible impediments on the good working of this road that they can. And we, I think may rest assured that unless we keep this road perfectly within our own borders, and cut it off from all control of their legislation, its great benefits to us as a road and as a means of connection with our past market in the world, will be greatly crippled and diminished.

Sir, it is unnecessary to enlarge on this matter. All I have to do is to make a suggestion to the minds of intelligent members, and they must be compelled to appreciate the force of these suggestions.

Why, sir, what market have we in comparison with Baltimore? Whither do we take "the cattle on" our "thousand hills"? Where do we send our oxen, our horses and our surplus grain? True the Ohio river and Cincinnati would be free to us; and the Southern market, when these states are subdued and brought back to their proper allegiance will be as free as they have been hitherto; but put all these markets together, and for the great proportion of this new State, they do not altogether amount to as available a market as Baltimore itself. This is our only connection with the eastern marts of trade—our only connection at present for all this scope of country with Baltimore and Philadelphia. All our staple productions must be carried over this road—or at least a majority of them—to find a good and a profitable market. Therefore, sir, I think that we should hesitate long before we decline to receive these counties into our embrace.

My friend from Wood sitting nearest me (Mr. Stevenson) made an excellent argument on this question the other day, in which he forcibly urged the necessity of holding out to our neighbors around us who have skill and capital and strong arms and a surplus population, inducements to emigration to come into our midst and build up our new State with their capital and skill—disembowell our mountains, make our rich mines available, or help our native population to do it. Sir, what will our mountains and mines be worth, if we are cut off from a market. Is not the inclusion of this road and all its benefits to us essential in that point of view? Will men of enterprise and skill and capital come and settle in our midst where the productions of their industry and the earnings of their skill can find no convenient market and must be crippled by hostile legislation in passing to those markets. I beg gentlemen to consider these things.

Moreover, sir, this territory is a very valuable territory to us. The physical formation of the country all tends towards the Baltimore and Ohio Railroad. The market of this portion of the State we propose to include is Baltimore. Its streams flow to this road. Its natural connections are all with this road. Its staples here find the readiest and perhaps the only market they have anywhere. Cut them off from us and our friends as they are, and where will they find any market at all. They will never cross our mountains to come down here to the Ohio river. They will feel all the evils of this hostile legislation of eastern Virginia in reference to this road. They will be essentially cut off from all markets on the face of the earth if you refuse to include them in our new State so as to include and open a free course to their natural markets.

And, further: they are homogeneous, not only in commercial and industrial interests; but as much as gentlemen may say of that certain consideration here—it has got the cognomen of "certain consideration"—notwithstanding that certain consideration they are with us in feeling and social habits, as they are with us in interest. Is it not the fact? Look at the past. Look at the record of your experience in the past upon test questions. Have they not been under the ban of eastern Virginia unfriendly legislation? They have received no benefits from appropriations by the Virginia Legislature. They are cut off from all participation in the advantages arising from the large taxation which they have paid into the treasury. What appropriations have been expended in their midst? None at all, sir. Their influence has been mingled with ours in an outcry against this partial legislation of eastern Virginia; and the very reason—and the only true and legitimate reason—upon which we predicate our claims to separation is equally applicable to them. They are not allowed to participate in the large benefits of the appropriations of Virginia. Their leading lines of improvements are in another quarter. There stands Winchester and the county of Frederick, that have been knocking at the door of Virginia legislation ever since I can remember, for a little favor—not for money, but for the small favor of connecting the Winchester and Harpers Ferry railroad with a railroad at Strasburg, the Manassas Gap road. The Virginia Legislature had uniformly refused to enact such a law, not only to make an appropriation for that road, as it does by millions for other roads, but has refused to allow that large and populous and intelligent county the poor pittance of the naked right of way for connecting these two roads that they may get to an eastern market in the direction of Alexandria. And yet will gentlemen say they will not cripple the Baltimore and Ohio Railroad by unfriendly legislation? Why, could we have or ask for any better evidence of their feelings in regard to the interests and welfare of these counties? There are Jefferson and Berkeley and Frederick, three of the richest counties in the State—three of the largest tax-paying counties in the State—and yet such has been the hostility of Virginia legislation and policy to that section that they have absolutely and persistently for years declined to grant to that people the pittance of the right of way from Winchester to Strasburg, to build a railroad at their own expense! They have always been with us, sir. They were with us in solid phalanx in 1851, as the gentleman from Wood (Mr. Van Winkle) well remembers. We had strong men, and strong arguments, and an united voice from every one of these counties. There was Seymour, of Hardy; and there were the strong men all down in these other counties, all uniting with us on the question of the White Basis. Notwithstanding other particular considerations that existed there then, they were with us in this respect; and I believe they are with us today in feeling as they are most inevitably with us in interest.

And now, sir, as to that "other consideration"—we cannot avoid it, Mr. President. I am sorry that gentlemen have seen proper—from the purest sense of duty and conscientious obligation, I am sure—to urge the consideration of the slaves within the limits of these counties as a reason for excluding them. I am sorry the question of slavery must be discussed here; but it has been discussed; and I think from the indications it is the main objection to the inclusion of these counties on the part of some of my friends on this floor. I am sorry to see the question here; but it is here. It is a disturbing element wherever it goes. It breeds discord and distraction wherever it is agitated. Even the strong bonds of church fellowship are snapped by it; and Christian brethren are distracted and driven asunder. The very followers of the Prince of Peace himself, this day maddened by the extraordinary character of this question, and its extraordinary influences on the human heart, are now outstripping the vehemence of strife we see in the political arena itself. I am sorry it is true. And now, sir, this day, when our glorious old Ship of State is rolling and straining on the mountain waves lashed into fury by this question —with part of the crew in mutiny, and another part of those traitorous bandits seeking to lay hold on the helm of the ship itself—I say I am sorry that we are about to invoke another blast of the fiery breath of the very storm king himself of all our agitation, upon the angry elements that are surging around us. Let us rather invoke the spirit of conciliation and concord, remembering that we have enough to do in settling and conciliating the conflicting political elements around us without adding fuel to the flames that are already mountain high in our midst.

But, sir, let us look at the question. I am free to say here and now that while I recognize to the fullest extent my obligations to that oath which I have taken to support the Constitution of the United States, and will respect and defend slavery wherever the Constitution respects it and guarantees, carries and protects it, yet, sir, so help me God, I never will give any passive or active agency of mine, now, henceforth or forever, to make a single human being a slave that is not now a slave or to extend that institution on a foot of soil that is now free. But, sir, we have evils enough without that consideration today. We must take things as they are. Let us look to that evil and see its extent and its operations within the limits of this new State. I have taken the pains to make a little calculation, sir. Now, sir, what is the extent of this slavery objection? In the thirty-nine counties there are 6,894 slaves. In the five counties of Pocahontas, Greenbrier, Monroe, Mercer and McDowell, which were included the other day, there are 3,253. According to the table which we have before us, prepared by the committee there are in the counties now proposed to be included, including therein the county of Alleghany, which has been stricken out, 12,831—making a total of 22,978 slaves. And that is the extent of the argument or "other consideration" as it is called. Now, sir, what is the white population? The white population in the same territory is as follows: in the thirty-nine counties there are 272,759, according to the table before me—a little different from the Auditor's table. There are in the counties of Pocahontas, Greenbrier, Monroe, McDowell and Mercer, 31,674. In the counties now proposed to be included, including also the county of Alleghany, 76,453—making a total population of 380,886 white population, 22,978 slaves. Is there anything in that to alarm us? I cannot see anything in it, sir. Is it proposed to increase the number of slaves? Is it proposed to put bondage upon a single human being that is not now a slave? Will it promote freedom in a single degree or slavery in a single degree? Is it not alike indifferent either on one side or on the other? It does not forge a solitary shackle. It does not increase an inch the slave territory. It is slave territory now and it will only be that if it is included; and it will be slave territory if it is not included. Those slaves within the proposed limits now under consideration are slaves at present: they will not be set at liberty if we do not include them, and they can only be slaves if we include them. Their status is not changed.

So far then as we may look at this question in reference to the slave himself, their condition will not be changed. Certainly their condition will be made no worse. But then does it peril the ultimate result that must inevitably take place? I think not. I am free to say here and proclaim it that this State will inevitably be free in due process of time; and if we get our new State that time is not very far distant. Sir, "whom the gods intend to destroy, they first make mad." And this very effort to break up our glorious Government on the consideration of pro-slavery propensity will result under Divine Providence and in the natural course of things, I verily believe, in the total abolition of slavery, in all Virginia and all the United States. That is my opinion. It is doomed; and the friends of the institution have brought the doom upon it by their own conduct. But certainly within the limits of this new State, the period is not very far distant when every slave, except some old body-servant to whom the master is attached, and who is under obligations to protect and cherish and defend him as long as he lives will entirely disappear from our borders.

Why, sir, what is the fact? Take the thirty-nine counties, for instance, during the last decade. Ten years ago, I believe there were about 8,000 slaves in it. Well, sir, where is there a single period in the history of our country where there has been such persistent efforts to propagate this "other consideration" in our midst and elsewhere? You cannot find any; and yet, sir, looking at the census of 1860 you only find six thousand some hundreds slaves on that territory—a decrease of one-fifth, with all these influences in its favor, in ten years. If we get a new State, with the inevitable result apparent to every intelligent mind but a short distance ahead, I demand to know whether slavery will not decrease much more rapidly in all this territory hereafter than it has heretofore. Why, sir, the census of 1860 reports 12,831 slaves in the counties now proposed to be included; but are there that many there now?

Why, sir, it was but the other day we saw an account taken from a southern paper, in which it is alleged that the military authorities had been compelled to prevent slaveholders in Jefferson, Berkeley and Frederick, and other contiguous counties from sending them south. It is alleged that in this tier of counties along there, five or six thousand slaves have been sent south since this war commenced. When our armies pass over that territory will they not before our advancing victorious standard carry their "other considerations" all along with them further south? The result is inevitable, sir; and when this rebellion is subdued, and when the Union is reestablished, and the Constitution resumes its legitimate authority over these counties, as I trust it soon will—I venture to say instead of 12,831 slaves in their limits there will not greatly exceed half that number. I cannot apprehend, then, sir, any difficulty from that quarter.

Mr. President, I had intended to present some other considerations to this Convention; but I find I have already trespassed upon the attention of the Convention longer than I had intended to.

And now, sir, let us look at the matter in its true light, divested of prejudice. Let us place ourselves upon the high and elevated position of statesmen designing to lay the foundation of an enduring, prosperous, homogeneous, convenient State, looking to the welfare of all these sections in its industrial connections, in its commercial connections as well as in its social habits and relations. Look upon the map and look upon the points and places with which we trade, upon the flowing of our rivers and the conformation of our territory, the peculiar necessities by which we are surrounded; and especially look at the fact that if we expect to invite successfully capital and skill to build up our great State, to disembowel our mountains, to make our mines available, and all the abundant natural elements of the wealth and power of a great new State—to make all these available and profitable by the introduction of capital and skill from abroad or by inciting industry and skill in our people—let us look whether we can reasonably expect to accomplish these necessary and high results if we cut off this channel of trade that connects us with the best market to which we hitherto have had access. You might as well sever an artery in the human body as to cripple and cut off this great artery of trade and expect our bodies to live as expect this State to live and flourish unless we include in our boundary this Baltimore and Ohio Railroad.

MR. STEVENSON of Wood. I have endeavored, sir, to make up my mind from the arguments which I have heard in reference to this matter, and also by frequent references to the map; and as far as I have been able to get in the history of this railroad, I am very willing to admit, sir, that a different class of arguments, may be used in favor of the addition of these railroad counties from those which were or may be used in favor of the addition of those valley counties proposed to be included with them or even the counties west of the mountains already included. For that reason, sir, I do not exactly favor the amendment offered by the gentleman, of including all the counties in a single vote. It is possible, sir, some of the counties adjoining the counties through which the railroad runs may be as necessary to give us control of that improvement as those counties themselves. I suppose the county of Hardy is probably as essential as either Hampshire or Morgan or Berkeley or Jefferson. Whether these other counties are or are not I have not exactly made up my mind. I will say this much, sir, that I do think complete possession of that road by the new State is very necessary; and if I was a believer in the doctrine quoted by my friend from Kanawha—and I believe he gave no less authority than that of Vattel—of wresting territory that was absolutely necessary to the existence of a state, I would be in favor of it on this occasion. But I have not declared myself a convert exactly to that doctrine; although I believe Jefferson, as he said, did proceed upon a belief of its correctness in the case of Louisiana: I think, sir, that the possession of as much territory as is necessary to the working of that great improvement is more essential to the prosperity of the new State than the addition of those counties of Pocahontas, Monroe, Mercer, McDowell, and Greenbrier. I do not propose, however, to apply that very severe doctrine in this case unless I was certain it was absolutely necessary. And that brings me to this consideration: is it likely, is it probable, do the facts in reference to these counties that we have at present or may have possessed heretofore justify the belief that a majority of the people in this district will accept this proposition of ours to come into this new State? Now, sir, that is a very important question. I have seen some figures used by gentlemen in private that would seem to indicate almost to a certainty that even if this Convention opens its arms and extends its invitation to the counties embraced in this resolution, or in the amendment offered by the gentleman here that they are almost certain to reject it. Now, sir, that would be a difficulty I would like to make some provision for. But, sir, as has been remarked here this railroad seems to be the natural outlet for all this region of country for the trade of Baltimore and the counties and states that are reached through that great metropolis. I am willing to admit that we have an outlet to South and North and Northwest by the Ohio river; and that same stream with its tributaries will lead us and our trade so that we can reach the cities of Philadelphia and Harrisburg and even Baltimore by that route; because even if we lost the control over this improvement, we are not entirely shut out from that trade. We have the Pennsylvania Central and Alleghany Valley Road. It is true the latter is not completed, but it will be in a few years so as to tap the Central and Erie. But after all these are not so natural and direct an outlet as we can get by having control of and by nourishing and protecting this improvement which it has been the steady object of eastern Virginia to cripple and if possible to destroy.

There is another fact, sir, and that is this: it seems to me our immediate connection with the people in these counties—if we do not think alike or feel alike, or if we have not interests that are not alike in every respect or in many respects—yet our frequent intercourse will be calculated to consolidate these interests and unite them. These arguments seem to strike me as very forcible ones in favor of the annexation or addition of these counties. I confess I do not like the border which it makes. Nor do I like the fact that it leaves us comparatively defenseless after we have got them; and the argument which I have used and which has been used heretofore in reference to a community of feeling and interest is just as strong in this case, with the exceptions that I have named; but I think they are overcome by other considerations of policy and expediency and interest which would seem to indicate an absolute necessity for having that great improvement entirely disconnected with any foreign government either of loyal eastern Virginia or of eastern Virginia in rebellion; and I shall feel inclined to vote at least for the counties through which this road immediately passes, unless there are stronger arguments used than I have heard against extending our boundary over them.

MR. LAMB. Mr. President, before the question is put on this subject, I desire to submit a few remarks to the Convention; and in the outset I desire to tender my thanks to the gentleman from Monongalia whose argument has so fully covered certain branches of the subject. I am happy to say that my views upon those branches entirely concur with his; and that the argument which he has submitted to the Convention renders unnecessary for me to say much that I otherwise intended to say.

MR. WILLEY. If my friend will allow me, there is another fact I forgot to mention; the slaves of the whole new State including this arbitrary territory and these counties which we are now proposing to include, amount to eighteen per cent of the white population.

MR. LAMB. I shall have to correct the gentleman's statistics there: the slaves of the new State, including the counties that are now proposed to be annexed, will amount to between *five* and *six* per cent of the total population—not *eighteen* per cent.

MR. WILLEY. Did I say *eighteen?* I meant *eight* per cent.

MR. LAMB. They amount to rather less than six per cent. I concur in the necessity which has been so well explained why we should have, if it be practicable to obtain them, some of these counties—all in fact which are included in the resolution now under consideration, except probably, Bath and Alleghany. There are reasons for dispensing with these two counties, which do not exist as to the others. The Central Virginia Railroad penetrates part of the territory of Bath and terminates at present in the territory of Alleghany. There is no propriety that the end of that road should be in our territory. It belongs naturally to another district. The people who will depend upon that Central Virginia Railroad for commerce and travel will necessarily be connected with another district. Admitting the remainder of the counties, we have at least a mountainous country throughout—a country that would be easily defensible, and a country which from its trade and all its connections naturally belongs to the west. Even in the valley of the Kanawha, if the improvement is made which ought to be made, connecting this southwestern portion of the State with the Baltimore and Ohio Railroad, our vital interests will be dependent on the question to whom this section of territory belongs. But I do not intend to argue this branch of the subject, as it has been already so well explained. Here, however, let me make one remark to correct what I think is not a correct proposition advanced by the gentleman from Monongalia. He represents this Convention as having already decided that they have the power to take territory without the consent of the people. This is not putting the proposition on its proper basis. The Convention did decide that as the Constitution must necessarily be submitted to the people within its limits, it was not necessary to have the consent of the people of each particular county but of each particular district, if a majority should ratify it. This is the extent of the decision; no more. They decided—and it is not a decision; for it is a necessity of the case—that as their action must necessarily be submitted to the action of the whole people, no county, no particular district, no two or three counties lying contiguous have a right to put a veto upon the necessary action of the Convention, if it should receive the approbation of the whole.

One great objection seems to have been ascertained to the measure which is here proposed; but which I think is without any foundation. It has been intimated at least, in various quarters that the proposition of these measures is intended to embarrass the organization of the new State, to defer it; or if not intended to do so that it is the necessary effect. I do not see, I must confess, Mr. President, how it can have any such operation. We propose under certain conditions to annex additional territory. That territory is not yet within our limits. We are to go on therefore and make a Constitution with the best speed we may for the territory which we decide to be within our limits, investing in the legislature which we are to constitute proper authority to meet the question in regard to the additional territory when it shall be decided that that territory is to come in. We do not interpose any obstacle whatever in the way of our presenting a proper Constitution and in the way of our authorizing that legislature, if this territory is hereafter to come in, if the contingency occurs in which it is to be annexed—authorizing the legislature, as a matter for the future, to make proper provisions in that respect. We will go on, I trust, if this hypothetical annexation is to take place, and finish up our Constitution at once without delay or embarrassment from this subject and by a simple provision leave the legislature if this territory is hereafter to come in, to provide for its proper representation in both branches of the legislature and in the judiciary. This can very readily be done; and it can present therefore no difficulties, no delays in regard to organizing our new State.

I have said at the outset of this matter—and I trust I have credit among members of this Convention for having made the declaration honestly—that though I thought this new state movement was premature, I had been elected by my constituents and I had come here for the purpose of honestly endeavoring to organize the new State as speedily as possible, and with the best provisions that we may be able to devise for the purpose of securing the welfare and safety of the people to be included within its limits. I do not think, therefore, that this objection or this apprehension ought to have any weight with members of the Convention. It would put a clog upon our movement in this direction.

Another objection is felt, evidently, if not expressed—the objection which was referred to by the gentleman from Monongalia: that the annexation of this territory may tend to perpetuate slavery in the new State. I concur in the position which the gentleman from Monongalia assumed on that subject, and I need not repeat it for myself. Slavery is doomed in the new State—doomed, gentlemen, without our action; by the natural and inevitable cause of events. The annexation of this new territory will not prevent that result, if gentlemen are so anxious for it. If we include the counties of Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick, what will be the result? I will not repeat statistics that have already been given to you; but call your attention to the matter in another shape. Of those seven counties, there is not one in which the number of slaves has not decreased between the census of 1850 and that of 1860—not a single county. In Pendleton we find a decrease of 78; in Hardy, of 187; in Hampshire, of 220; in Berkeley, of 306; in Jefferson, of 381; in Morgan, 29; and in Frederick, of 35. And how has it been since the census of 1860? Is there anyone here that supposes there is one half the slaves perhaps in that territory now that there was when the census of 1860 was taken? The thing is dying out; and without our interference—without anything of that kind on our part it is doomed and it is dying. We have a perfect right to look at the fact. We have a perfect right to look at matters that we see in actual progress before us. And we have a perfect right to trace that fact and those matters to their necessary results. When New York, the great State of New York that now is, came into the Union, she had a total population of 340,120. The new State will have a total population of about 400,000. New York had then 21,324 slaves. With a less total population she had a larger amount of slave population than the new State now will have. New Jersey, when she came into the Union—or at least by the census of 1790 had a total population of 184,000, and a slave population of 11,000—a much larger percentage at least than will be presented by the new State. And, gentlemen such statistics have never been presented in regard to any state of the Union that it did not necessarily in the end work out a free state.

I should be glad, in order to obviate an objection that was very forcibly urged to the mode in which this resolution is expressed, to propose at the proper time an amendment. The objection which was urged was this: that it requires a majority of the votes cast, when the question is presented to the people of these counties to decide on the ratification or rejection of the new Constitution; and it was said very properly that within this county or that some half a dozen or a dozen men might assemble at a precinct in the county, cast a dozen votes or so, and then a majority of the votes cast in that county would be in favor of a ratification, or against a ratification, and decide the position of that county, under the resolution. I would be glad, and would rather suggest than offer, that the resolution should include some provision requiring in some way that a substantial vote should be given by the people of these counties. Perhaps it might be in something like this shape "Provided the aggregate vote cast as aforesaid in said district be not less than one-fourth of the aggregate vote cast in the district at the last presidential election." And to obviate another difficulty that I see in the resolution, that the people may not be able to vote fairly and freely on the third Thursday of April next—for I think that in that respect the probabilities are very different in reference to this district from what they are in regard to the district decided upon yesterday—I think it would be well to add words requiring the vote to be on the third Thursday of April next "or at such other time as the Legislature of Virginia may appoint;" so that if a proper expression of the sentiments of the people in this district cannot be had on that particular day, the legislature may provide another day for taking it. We know not, verily, what is to happen between now and the third Thursday of April. There is a decided prospect, I think, that the counties within this district may be cleared of the enemy before that time but if this should not be the case, I would not have the vote confined to a particular day. I would make the provision one that would operate, that would be practicable, in almost any reasonable contingency that may be anticipated.

With these remarks, gentlemen, I submit the question so far as I am concerned.

MR. VAN WINKLE. Mr. President, it is not with a hope of adding anything to the arguments that have already been laid before the Convention by the gentlemen who have preceded me this morning, not with a hope either of adding any new arguments upon the subject, that I rise on this occasion. I rise, sir, rather to gratify my own deep solicitude upon a question which I am convinced is of the utmost — the almost indispensable — importance to the proposed new State. I allude, sir, to this railroad; and I believe, sir, that it is important that the control of that railroad should be in the States of Maryland and West Virginia. There can be no doubt of the fact, sir, that if any part of it continues within the old State of Virginia, the road having neither of the termini within that state, that they will at least fancy that they have a limited and circumscribed interest in it. And if we are to judge the future by the past, we may expect all sorts of crippling legislation, all sorts of restriction; everything they can do to hamper and cripple that road in order to build up those in which they feel some interest for themselves. Such, sir, has been the history of the past; and there are several gentlemen on this floor that with myself can testify to it. My connection, I suppose, with railroads is known to every member, and the circumstance that my attention has been forced to these subjects, that it has been in accordance with my business and interests to make myself familiar with all that relates to this great railroad. I have, sir, since the passage of the charter of the Northwestern Virginia Railroad, which was contemporaneous with the sitting of the convention of 1850-51—I have until the last session of the legislature, spent a portion of every winter at Richmond; and my principal business there, sir, besides endeavoring to get some legislation for our company, has been to fight off in the best way I could the attempts that were made in every session of the legislature, without an exception, to place restrictions on this Baltimore and Ohio Railroad. The whole course of legislation towards it has been characterized by a spirit —I hardly know how to characterize it; for it would dignify it to call it by the name of rivalry, competition, or jealousy—or something else that could not bear to see prosperity in a rival city in another state to which that road was contributing.

This has been the history of the past; and if we separate this State by a line that does not include this road, leaving a portion of that public improvement within what will continue to be the State of Virginia, the motives to similar conduct are stronger than they have been heretofore; and the only interest and only influence that can be exerted at Richmond in favor of it will be from these few counties embraced in this resolution. Now, sir, I am satisfied that no gentleman who has spoken, including myself, has overrated the importance of this railroad to all the interests of this new State and of that Ohio valley. That road is now closed owing to the action of the rebels, and what do we see? We have seen the Chambers of Commerce of Cincinnati and other western cities memorializing, and letters from the authorities of various railroads—all praying that this road might be again opened. They have the Pennsylvania road, at Pittsburg, with connections running to their doors, and at Cincinnati have numerous connections with the East, yet the prayer and action has been that this road may be opened, of such importance do they deem it to the Ohio valley.

I should like any gentleman to point out to me the county lying within any proposed limits of the new State that is not directly interested in this improvement; and judge, sir, if it is not likely to be more interested than it is now. Sir, there are numerous counties that under present circumstances, at any rate, cannot have a connection with their proper market unless it is by making use of this great line, lying below Wheeling and Parkersburg, on the Ohio river or back from the river; and every one of them has already felt the benefit of this great line. They send their produce to the river; it conveys it to Parkersburg or Wheeling; and the railroad takes it east.

Sir, I showed by statistics in the convention of 1850 that the relative prices of wheat at Parkersburg and at Wheeling, or on the Ohio river, showed a difference in the proportion of 100 to 60. That is to say, when wheat was worth $1.00 at Richmond, it was worth but 60 cents on the Ohio river. Now, sir, the opening of that road has diminished this difference one-half. A barrel of flour is now carried from Parkersburg to Baltimore for less than $1.00 per barrel. So that the relative price of the western to the eastern markets has increased 33 1-3 per cent. That has been one consequence; and I mention this not because others might not be mentioned, but because a familiar one, and simply for the purpose of showing that the relative prices of wheat have been increased 33 1-3 per cent by the opening of this road. If I err a little in the figures, gentlemen can correct me; but there is no gentleman familiar with such things who is not aware that the increase has been great—the relative increase; because the price of wheat moves up and down with us as it does in the eastern markets; and our price always has borne, previously to the opening of the railroad, a reference to the eastern price; but now the difference is not as great as it was then by one-half.

There are other circumstances, sir, besides the mere conveyance of our produce to market for which these improvements are valuable; but to mention one item is sufficient to illustrate the whole.

I do not see, sir, in looking around this Convention, a gentleman here who from the location of his county is precluded from a participation in these benefits, or who has been. It is, sir, the great natural route. It is the route fixed upon by General Washington himself as one that must in time be made, although he had no idea then of a railroad. The most he hoped for was something like a water connection by portages and partial canals. He looked, it is true, to the waters of the Monongahela, after he left the Potomac; but we all know the object after getting to Pittsburg was to get down the Ohio river. Owing to this great improvement, we touch the Ohio at a point much lower down and accomplish the purpose had in view in a much better way. It is the shortest line, sir, from the Ohio to the seaboard. It never can have a rival in that respect. Nature has made the country and has adapted it for this purpose; and it is evident that under proper encouragement and favorable legislation it may not only become highly prosperous but may become the greatest highway in the nation. Sir, I look for that, when things shall have resumed their accustomed course in this country; when the Union shall be pacified; when our new State shall have been erected, and when this road shall at length have the favor instead of the disfavor of those who can legislate for it.

I trust, sir, therefore, that there are no considerations—I believe there are no considerations—however important they may be in themselves, that are of sufficient importance to weigh against this great end of promoting our material prosperity. Sir, it is one of the reasons for which we have assembled, and which we place in the very front as justifying us in endeavoring to separate the old commonwealth—that our business interests are diverse from theirs; that they can neither know nor appreciate them that their interests would lead them to oppose ours being in natural opposition to them. And shall we for any temporary considerations throw away this very instrument by which that business is to be fostered to an extent which none of us can now foresee? Sir, I do not look to see this new State simply prosperous on the average. I look, sir, whenever we shall have had time to set it in motion, time to get used to the new institutions erected among us, the legislation, and so on, I do look, sir, for the very highest degree of prosperity to attend our efforts. Sir, remember that our arable lands are nearer to market than the west, and while their production will exceed ours and will regulate the prices, yet we have almost a sufficient profit on ours in the difference of transportation—say on a bushel of wheat from Illinois and from Wheeling—the difference in freight alone makes a profit of it. Well, sir, we have a country, all of which, if it is not adapted to arable purposes, is adapted to the raising of cattle and sheep. We can cover every foot of these mountains with something that will pay; and when we have the inducement to do it I expect to see every foot of these mountains—or as old "Jo" Johnson used to say "the cattle upon a thousand hills; or a thousand cattle on one hill, as you please." But there can be no doubt that if the prosperity of our whole beloved country is restored, the share which this proposed new State will have in it will be by no means among the smallest. Sir, we must have our lines of communication. Then we can control to some extent our channels of trade and business. We must have material prosperity to lay at the base of our intended improvements. No other species of prosperity will suffice if we are to build our country up with schoolhouses and churches. Sir, material prosperity must lie at the bottom for that. We must have the means to make those improvements which we crave or they will not be made. They depend on human exertion and the application of means under human intelligence, with the blessing of God, of course; but sir, I say material prosperity lies at the base of the whole of it. That we must have. That we will have by means of these lines of communication—not because it is this road or that, but because it is so situated as best to promote those material interests. I cannot, therefore, sir, as I have already said conceive an argument that can weigh in the scale against this one in reference to retaining the control of this great road. And, sir, I will merely add the results of the figures stated here by the gentleman from Ohio.

This decrease of the slave population, which he shows, is uniform in every county; that is to say, there has been a decrease within the last decade amounting to five per cent on the whole number of slaves that were in these counties ten years ago. Now, sir, how long will it take an annual decrease at that rate to exterminate the whole thing? We must remember that before we begin to count this decrease the whole natural increase must first be observed. That is to say, the slaves must first be diminished by a number equalling the whole number of slaves born within the ten years and then have the decrease added to it. I apprehend that would make it something like 12 or 15 per cent of decrease on the original number. And you know also that it must decrease in an accelerated ratio; because if the parents are taken away fewer children must be born. Therefore, sir, these figures are very significant; and those gentlemen who have scruples on this subject—which I respect, although I do not always respect the actions to which these scruples sometimes lead—but that these gentlemen may assure themselves that there cannot be anything so formidable, anything objectionable, if it is drawn from the number of slaves within the territory, allowing their views to be the only correct ones on the subject, as to weigh one moment against the great importance of retaining control of the western end of this road for our own ends. Nor do I think, sir, there is anything formidable in the objection in any way or shape, leaving that out of the question. As has been repeatedly stated the thing is decreasing. Natural causes are extirpating it; war is diminishing it; and in every respect the thing is going of itself faster than human laws could make it go, if left alone to human laws. But then the whole number is not sufficient to characterize the State as a slave-state. You may call it a slave-state because there are slaves in it; but what would be the influence of ten thousand or twenty thousand slaves in a white population of 400,000 or upwards. Would it give any tone or character to the legislation of the State? I think, sir, that while that relation does continue, we should see that it is properly protected; but it could not give tone to the legislation of the State, nor to its institutions or the conduct of its affairs.

I think then, sir, there is nothing in this objection to any of the counties even apart from this railroad. But when you bring it into competition with a great interest, when you remember everything is dependent on our material prosperity—and it is greatly dependent, I might say almost wholly dependent on keeping open a suitable avenue of communication—the objection, however formidable it may have appeared in the beginning, vanishes and becomes nothing.

I trust, sir, that gentlemen will look well into this question. We must look, as the saying is, to the "main chance." If we do expect to derive prosperity from this separation; if we do expect by being allowed to form our own institutions and conduct our own business in our own way, and attain that degree of prosperity which we all hope for certainly it would be but a suicidal policy to throw away, cast from us, the very instrument by which all this good is to be effected.

MR. WILLEY. Mr. President, I forgot to mention a fact merely, which is this: high authority has been quoted here against the propriety of adding anything to our territory. By doing this we at once secure in Congress the influence of the city of Baltimore, and the coöperation of the entire Maryland delegation. Don't you see it? The strong and great influence of Baltimore, and the entire united Maryland delegation. If we exclude these counties they will not care anything about the new State.

THE PRESIDENT. The Chair was not aware that an amendment to the amendment was put in.

MR. POMEROY. I offered that amendment, sir; but I did not understand the Chair to consider it in order; and hence I have said nothing on it. I thought I was perhaps mistaken. If that is so, I won't discuss it at all, but will merely say that it was to strike out the county of Bath. A reason is this: according to the original resolution requiring a majority of the counties to vote in favor of coming in, it diminishes, as was stated in the case of the county of Alleghany, by one the number of those counties; and if it was necessary to go into a discussion, I think I can show that there is no probability of any poll being opened in Bath.

MR. LAMB. I would like to understand the position of this matter. A gentleman moves, I believe, to strike out Jefferson.

THE PRESIDENT. The Chair would be of opinion that the motion of the gentleman from Hancock would be out of order on this ground: the motion of the gentleman from Ohio was to strike out all but two counties—

MR. BATTELLE. No, sir; the motion of the gentleman from Brooke county.

THE PRESIDENT. The gentleman from Brooke. The gentleman from Hancock proposes to amend that by striking out one of the same counties that was stricken out by the original motion. Under those circumstances the opinion of the Chair would be that the motion would not be in order.

MR. POMEROY. I would just say, Mr. President, in accordance with that decision, and perhaps it is a correct one, I would just wish to say this before the vote is taken in order to appear consistent. I cannot vote for the amendment of the gentleman from Brooke, from the fact that it strikes out a number of counties some of which I am in favor of not striking out, if the plan be adopted of letting each county vote by itself in its order. Therefore I cannot vote in favor of the amendment.

MR. BATTELLE. What is the proposition, the precise motion, now before the house, the amendment being withdrawn?

THE PRESIDENT. The question would arise upon the adoption of the amendment alone.

MR. BATTELLE. Then an amendment to that amendment would be in order?

THE PRESIDENT. It would depend on what it was.

MR. BATTELLE. Would the proposition of the gentleman from Monongalia be in order?

THE PRESIDENT. I was not in the Chair when the gentleman made his suggestion; and therefore could not decide on that, either.

MR. HERVEY. Upon this question I call for the yeas and nays.

MR. HALL of Marion. Mr. President, I have not found the question yet.

The Secretary reported the proposition of Mr. Hervey to be, a motion to strike out the counties of Jefferson, Berkeley, Morgan, Pendleton, Highland, Bath, and Frederick.

MR. BROWN of Kanawha. While, as I have stated, I felt a strong indisposition to add this district—from which I understand the Convention have stricken out Alleghany, I confess not only from arguments of gentlemen but from my own knowledge of the case, there are very strong reasons in favor of a few of those counties lying along the railroad. I can see and appreciate the high considerations of securing territory that includes that railroad as the only outlet now left and that more especially when the vote of this Convention seemed to cut off all other outlets. I am willing that those counties should be secured; but as the proposition now presented places an individual in the attitude of having to vote for or against the whole, I suggest to the gentleman who offered the resolution the propriety of submitting the diminution of the district a county at a time so that parties could then vote for diminution as far as they choose, and whenever they got ready could stop.

MR. HERVEY. I believe the Convention is ready for the question. I prefer having a vote upon my amendment; and I call for the yeas and nays upon that amendment.

The yeas and nays were ordered and taken, resulting:

YEAS—Messrs. Brown of Preston, Brumfield, Cassady, Hansley, Hervey, Mahon, Powell, Parker, Paxton, Taylor, Walker—11.

NAYS—Messrs. Hall of Mason (President), Brown of Kanawha, Brooks, Battelle, Chapman, Caldwell, Carskadon, Dering, Dille, Dolly, Hall of Marion, Haymond, Hubbs, Hagar, Irvine, Lamb, Lauck, Montague, O'Brien, Pomeroy, Ruffner, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Stuart of Doddridge, Trainer, Van Winkle, Willey, Warder, Wilson—33.

So the amendment was not agreed to.

MR. BROWN of Kanawha. I wish to preserve the opportunity of voting for a few of these counties but not the whole.

MR. POMEROY. My motion would now be in order, and I move to strike out the county of Bath.

Several members. Question! Question!

MR. DERING. Mr. President, I wish to correct the statement of my vote. The Secretary has put it down Aye. I voted No.

MR. IRVINE. I wish the same correction made in reference to mine.

THE PRESIDENT. Such corrections are usually made before the result of a vote is announced.

MR. HALL of Marion. I think it is usual to allow a member to change his vote afterwards. I know they did at Richmond for weeks afterwards—to our very great detriment.

THE PRESIDENT. The Secretary will make the desired corrections.

MR. PARKER. Is it now in order—a motion to strike out Bath?

THE PRESIDENT. That motion has been made. The question is on the adoption of that motion.

MR. PARKER. Mr. President—

Several Members. Question! Question!

The question was put, and the motion agreed to.

MR. STUART of Doddridge. I would suggest that the hour of recess has arrived.

THE PRESIDENT. The Chair will be vacated until half past three o'clock.

The Convention took a recess.

THREE-THIRTY O'CLOCK, P. M.

The Convention reassembled.

THE PRESIDENT. It will be recollected that some time ago a resolution was passed, requesting the Chair to procure a copy of the school law of Ohio. Judge Simpson of Ohio was here and has forwarded me this work which embodies it, requesting me to present it to the Convention in his name.

MR. VAN WINKLE. I move that the thanks of the Convention be returned to Judge Simpson for his politeness and kindness.

The motion was agreed to.

MR. HERVEY. I move that this volume be placed in the hands of the chairman of the Committee on Education.

The motion was agreed to.

THE PRESIDENT. When the Chair was vacated, the Convention had under consideration the third resolution, as amended, of the report of the Committee on Boundary. The question is on the adoption of the resolution, as amended.

MR. PARKER. Mr. President, I have a few words to say on that. It is now proposed—if I understand the motion—as it now stands—it is now proposed to ask the Convention to enlarge our boundaries so as to include Highland, Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick. The report includes Alleghany and Bath, on which was the debt of raising seven millions; which the new State—

THE PRESIDENT. The counties of Alleghany and Bath have been stricken out.

MR. PARKER. I was a little surprised—it struck me with a good deal of surprise, Mr. President—that the committee should include those counties. Why they should be included with that seven millions indebtment on them, when the new State would have the entire indebtment to pay, and still the improvements—

THE PRESIDENT. The gentleman from Cabell is not in order in impugning the motives of the committee.

MR. PARKER. I disclaim anything of the kind. It must have been—of course I impute nothing of the kind. I disclaim it entirely. It is an error of the head not of the heart; and I think there is a great many of them in the report of this committee.

The counties now proposed contain 68,453 white population and 10,895 slaves—a proportion of almost sixteen per cent black element of the addition that is now proposed to be made. The 44 counties already included contain 304,433 white population and 10,147 slaves. The proportion of black element here is 3¼ per cent. That is the way we stand, if we stop where we are now. What we take in addition comes in with that proportion (one-sixth) slave element. Now I look upon every increase of this element as dangerous to our success. If our State fails to go through Congress, it will be on account of slavery. Gentlemen say slavery is all going by the board. The Federal Government, with all its power has pledged itself to restore that Federal Government as it was before the rebellion, and to protect all rights (including rights in slave property) of all Union men. Gentlemen say that down here by Harpers Ferry, on the railroad, they are all Union men. If so, then their slave property is to be perpetual, if it is profitable; and it is to increase, and not decrease. Now, I am unable to see, in that view, how we can calculate any way on how it is going to die out. The valley for the last fifteen years has been growing slaves to sell, and then at a large profit. New York and New Jersey that the gentleman from Ohio alludes to never had that chance. If they had it, they probably would have availed themselves of it as soon as the valley of Virginia. I think they got pretty much rid, according to my recollection, up that way, of slaves before there was any demand; so that there was only profit in growing them to sell, south. That has grown up within the past 20 or 25 years.

Now, in this state of things, to my mind, and I have thought a good deal on this subject; and there has not a subject come up since the Convention convened that has been so difficult for me to come to a satisfactory conclusion concerning—the first question would seem to be, do the people want to come?—because there must be a sufficient consideration for our taking in this addition. Now let us look and see where that consideration is; and if there is a sufficient consideration and we can accommodate the Baltimore and Ohio Railroad Company, there is no company I would aid more gladly than that corporation. I respect them for their enterprise, their perseverance; have traveled their road from here to Baltimore, and have witnessed the energy and enterprise with which they have carried it through; and its corporation belonging to the city of Baltimore—a city I have reason to remember. When I was shut up in the city of Norfolk in that plague of 1855—some sixteen or seventeen hundred of us—if it had not been for the helping hand of Baltimore, with the aid of some other cities, but Baltimore in particular, whose steamers were running there free gratis every day with all kinds of provisions to take care of us—if there is any city in the country it is Baltimore and Baltimoreans I would be glad to help, if it can be done consistently with my duties here as a member of this Convention.

That is the question I have been trying to settle in my mind; because if the people over there that is proposed here to be taken in, really do not want to come, why then so far as I was concerned, I didn't want to spend time talking about them; because they will thank us to just keep still and mind our own business. Now, the evidence is that those people over there do not want to come. That is the evidence, so far as I have any. The invitation is plain—that ordinance which has been published and stood here for the last five months. So it has been with those counties there, with railroads running through them: with no interruption to communication: we know that they have seen that ordinance and read it. Well, now there can be no doubt but what they understand that. Well, now, what response have they given to us? That is the question. What response has Highland, Pendleton, and those counties up there—Berkeley—any of them—? Not one word, except our friends are here—two or three—three I think—two from Hampshire and one from Hardy. Well how far have those gentlemen got along towards coming up to what we want? Why they said last night they had come up here, but they were not ready to come in. They must have some four or five months more to see if the rest of the adjoining counties would come in with their counties. If they could have that time, and the adjoining counties would come in, they would; if not, as I understood the gentlemen, they would be under the necessity of petitioning Congress to stop our proceedings until they could try the question. Well, that seems to be all the evidence of any sort, on the part of the people that we want to come in here, whether they want to come or not. Well, now, it seems to me, taking the whole evidence, the preponderance of it is that they do not want to come in; that they are identified with the east, however they were twenty years ago. I admit, then they were with the west; but since then the east has covered the whole valley over with internal improvements—with railroads and turnpikes. They have won them to themselves and broken them off from us. They have detached them, whatever may have been their attachment before then. They have completely separated them from the west of the Alleghanies. Their railroads, their trade, their every interest is there beyond; and along there they can go out and step into the cars by going a few miles and in an hour or two they are in Richmond. Get them here! Take it from Highland. Why, how long will it take them to get to your capital here? Two or three days the best way they can come. But still we say those people must come here, because they will suffer a great loss if they do not get here! I know what *I* should think. I should say, my friends, let me alone. Well, now if they have any produce or anything that they want to carry away, where is the market? Do they want to come over to this Ohio river? Never! Not a pound of freight will come over here. It all goes the other way. Well, then their commerce as well as their travel is all in that direction. No question about it. That is the condition of the people, it strikes me, of that valley. Now, the change within the last twenty years; as far as I can learn—I was not living here then—but I have always understood the west and valley used to go together. The railroads came up, and they were for a while balanced between the east and west. Finally the east, to bring them over, gave them all these improvements, railroads, turnpikes and canals, and united them with her. That is the way they stand now. The gentlemen on the other side admit that there is no other outlet but the Baltimore road. Of course; it is a fact that is known to everybody. Now it seems to me that so far as they are commercially as well as socially affected, they are the other way.

Now, in a military point of view—because that becomes a question of some interest in these days of war, and particularly when John Letcher is looking for us, as I hear he is—the question is whether we have got fifty miles of border or three or four hundred miles of border—whether we have got the mountain that is a complete barrier, or whether the line runs down in the valley. It is a pretty important point. And just as certain and as soon as the Federal troops are withdrawn—whatever may be the result of the rebellion—there is going to be border fighting to some extent here between the old state and the new. Now there is no doubt about that fact. That may be after the rebellion is put down and the Federal troops are withdrawn. Well, suppose we get some three or four hundred miles of frontier and Letcher comes up and drives us back? We will get up on the Alleghany and look down. We have got it on our paper and in our Constitution, but Letcher has got possession.

Well, now, Mr. President, if gentlemen just cast their eyes a moment at the map, they will see that from the southeast corner of Highland, where they propose to come in, up to the Fairfax stone, it is about fifty miles as well as I can estimate. You follow those counties around to Jefferson county, and then take the river and come up the Potomac as the dividing line between us and Maryland. She is a slave-state, and is going to be. It is not going all by the board—not today. Then come up and go down round to the Fairfax stone: it is, I should think, about 400 miles.

Well, there we are: we have got a free-state there; and we have got that point running in there; and 400 miles frontier. Free-state, but slaves all round us. Well, that is—just refer to the maps, gentlemen—that is just the way I make it. But, I do not think I am far out of the way. Well, now, for my part, I do not want my constituents into any such fix. Now, therefore, in a military point of view, it seems to me there can be no question at all; and that is certainly an important matter at this time. For us to go and throw our Constitution over that territory and then have to back out and come up onto the Alleghany—why I should rather not have any Constitution at all. Because I do not like to back out. We could defend the Alleghany, as we have our line now. There are but a few gateways, a few passes that have to be guarded.

Now, the only remaining question, it seems to me, is, is there consideration enough in the Baltimore road to outweigh the social and commercial considerations; for I hold that they are all the other way; the feeling of those people is the other way: they do not want to come. And therefore, there is not advantage enough in the Baltimore road to outweigh these considerations. If I could bring my mind to see otherwise, nothing in the world would give me greater pleasure—and that I say most sincerely—than to go for the Baltimore road. But if I cannot without being untrue to my duty here, then I cannot. What would the leading, sensible, strong men at the head of the Baltimore road think if they should see our Convention instead of taking the proper boundary going out of our way to take in all their railroad? What do you suppose those hard sense men would think of us? I do not believe they would thank us for it. I think they would laugh.

This Baltimore road, as I remarked, is a large corporation, and an old one; and was, and is now, I suppose, as Baltimore was of Richmond, the rival of the roads in Virginia leading to Richmond and Norfolk. That was the question between the Richmond, Petersburg and Norfolk roads and the Baltimore road. They have been in strife for 30 years. There is no doubt Virginia was niggardly towards this road. So she was towards West Virginia. She neither would build any roads for us, nor let us build them for ourselves! Neither would she give the Baltimore road anything but the bare right of way. She was going to get the valley right and keep us till she got ready and see if they could not get a road from Alleghany into western Virginia, so as to draw us to Richmond. Virginia did run up to Winchester. She then had no road in the valley over the Blue Ridge at all. After they got to Winchester, they found out or got an inkling of what Baltimore was at—which was to run up to Winchester and take the trade of the valley. Virginia shut down and has held the road at Winchester ever since.

Well, now, the gentleman from Wood (Mr. Van Winkle) remarks that they built it to Strasburg. Well that carries it into the valley of the Shenandoah. So that if we give all that is asked here, still we would have to get a charter from Richmond to get there—as I understand the map. Could not carry it there.

Now, I am unable to see how we would be of much service to this road if we take it in. Of course, its managers are men of great shrewdness and cautiousness. Now these men of course have a charter from the general assembly of Virginia. Those men would not expend the amount they have expended on the Virginia soil unless they had a perfect assurance in that charter that what they were laying out was to be protected. Never! The gentleman from Wood speaks of hostile legislation, I want all the light I can get; and I will endeavor to do what I think is right on the subject. I should like to hear in what the hostile legislature consists. I do not see. It seems to me every right would be protected by a charter, just as much as it would be any way. It becomes a vested right. If any chartered rights in the country are protected, why that is secure. I certainly should be very slow to believe these road men would put their money in there until they had got their rights secure—until they were certain that Virginia would protect them. Well, if so, why then they must keep within their charter. Now these two systems have been competitors; but that did not amount to hostile legislation. If they legislate to violate their charter, why of course they are amenable to the injured party. I am unable to see how we could go about it. The gentleman from Monongalia remarks that this corporation—if we should extend to them what they ask—why the influence of this corporation at Washington would carry our new State right through there. Well, now, I know something of Washington; I know a little something of the influence that Baltimore gentlemen have there. It has been remarked—I wish no reflection—I have heard it stated—and from my recollection it was some one that I believed at the time—that several of the leaders of the Baltimore road were strong Confederate men. It may not be so. I do not assert it—that some of the leading prominent men were decidedly for the Southern Confederacy. Well, now, if that fact be so, why then of course, they would hurt more than benefit us.

MR. WILLEY. The gentleman will certainly state my argument correctly, if he desires to combat it. I did not mean the influence of the corporation, but simply the delegation of the city of Baltimore and of Maryland in Congress.

MR. PARKER. I understand it so. The city of Baltimore, gentlemen, is carried in connection with this company. But let me say to the gentleman that if the "secesh" element is round that corporation neither the gentlemen that so defend the corporation, nor the gentlemen of Baltimore can wipe it clean in Congress.

MR. WILLEY. The fact that there is a large secession element in the county of Cabell ought not to lessen the influence of the member from that county on this floor who is loyal.

MR. PARKER. I am endeavoring to answer his argument that by accepting this matter, we shall get a power through the Baltimore and Ohio Road and Baltimore to carry this thing through Congress. Well, I cannot understand it to be so. That I understand to be the gentleman's argument. I do not want to go into personalities—nor to Monongalia, nor to Cabell county.

It was remarked that we would have a large territory, and that would help us. Well, now, as I understand our present Congress, I do not believe it is corporations nor individuals, I do not believe it is vast extent of territory—that is going to give us favor there. I believe we should frame our Constitution that we are sent here to frame, so as to place this new government on the side of liberal and just principles. Place it there in our organic law. Show that we are diverse precisely from this old slave oligarchy, which Congress and the Federal Government are now struggling with, with an army of 600,000 or 700,000 armed men in the field. Let us show that we divorce ourselves forever from that, and range ourselves on the other side, and we will meet with favor. If we do not do that, Mr. President, nothing—nothing!—will carry us through, in my humble opinion. If this scheme that has been got up in Congress amounts to anything—proposing to take eastern Virginia to Maryland, to give the eastern shore to Delaware, and to give the two western counties of Maryland to West Virginia —why then of course, when the people are ready and want to come, we could go to the Blue Ridge. We could go there then. The Blue Ridge then would be our boundary. We would not zig-zag, round here with a frontier like a saw, but we would have the Blue Ridge. When that comes, why, it would be a practicable thing. But as it is now, it seems to me, as I remarked yesterday, that the whole work of this committee—I do not understand it. It seems to be an impracticability. I should feel, Mr. President, for these reasons, constrained to vote against the resolution.

THE PRESIDENT. The Chair would ask leave to say to the Convention much time might be saved to the Convention if the amendments were followed up and let the final discussion arise on the resolution as amended. The Chair understands there are other amendments to be offered to this resolution; and thinks it would be a great saving of time if they were followed up without intervals of discussion.

MR. TAYLOR. I move to strike out "Highland."

The motion was agreed to.

THE PRESIDENT. The question is on the resolution as amended.

MR. RUFFNER. Mr. Speaker, inasmuch as the Convention has taken this resolution in detail, and has seen proper to strike out three of the counties embraced in it, by way of testing the further opinion of the house, I would move to strike out the county of Pendleton.

MR. VAN WINKLE. Is it strictly in order at this stage? The house has voted this morning against striking out Pendleton and those other counties.

THE PRESIDENT. The Chair is of the opinion that it would hardly be a fair test; but it would be in order.

MR. HALL of Marion. Mr. President, I wish to say very little on this subject, and would prefer to say it on the general question; but as I conceive we are now down to that point that if we do not intend to strike them all out we should stop (Merriment). I have, really, sir, been struck with the course of argument that certain gentlemen are pleased to take upon this question. I may say, in the onset, what perhaps it is unnecessary to say, as a number of those who advocate striking out always preface it by saying that they are in favor of striking out all outside of the line of the 39 counties—well, I have been termed "a filibuster" because I have been voting in the other direction. I said before, however, in reference to certain counties, in behalf of whom I felt myself bound to vote, to give them the privilege to come along with us—said that if they concluded to do so, we would not be harmed; but when we come to this point there is more than that to influence us. I freely say, that we have now got to a point where I am again ready for "coercion." I was not for it away down in those other counties, because I knew they were not so necessary to us; nor was it so necessary or important to them that they should be with us. And I must say that my good friend from Cabell seems to be very much like a man who wants that every man of us shall have a loaf, and as soon as he gets *his* loaf, he says, Stop; we have got enough! I am surprised. I can hardly believe it. He did vote with us; but as soon as he got a little around him there he seems to have deserted us.

Now, sir, it is argued—the matter suggested by my friend from Monongalia, in the question to the gentleman—and the declaration is made that these men have no sentiment in common with us. I ask, why is that declaration made again upon this floor? Where is the evidence of it? I defy any man to bring evidence that will not condemn his own county—if you go outside of his own county—except perhaps Monongalia and Preston.

MR. DILLE. Adjoining the county of Marion!

MR. HALL of Marion. And Pennsylvania on the other side. I object to this course of argument. I maintain that it is unfair and unjust to ourselves and those whose interests we are acting on. Why, I tell you, sir, these very counties which we seek to include are more loyal than a majority of the counties included in the boundary of the 39. I tell you, sir, that I have had opportunity to know about it. In the day when we were struggling against secession in the convention at Richmond, we found many of the counties of the 39 that turned their back upon us; whilst the men from these counties stood up to us like men and patriots. Now, forsooth, because the armies of the country have not relieved these men, it is to be said and repeated that these men are not sound, and that they have no feeling in common with us. I protest against it. I demand the authority. Now I ask you to look at these counties: and we have got to a point. Now so far as Highland was concerned, we had a man who for a time did very well; but he is now in the rebel army—our friend Hale—our ex-friend Hale, I mean. Not a single one of these counties, if we take the evidence of all past action, but what is true and loyal and has always stood with us, not only on the national question—not only should you not reproach them with being secessionists; but they have stood with us in every question affecting the welfare and interests of West Virginia. And why? Because their interests are ours. They never differed from us because they were a part of us. And yet we are called upon to act now, when we see them under the power that we have just crept from under, and to act in haste and say what? Not even that you shall be permitted to come if you can get to and will. If I were down there; if I did not throw a bomb into your machinery it would be because I could not raise it, if you would treat me thus.

Now, the map will disclose the situation of these counties. We have got to that point now that it occurs to me if we intend to take anything but the 39 counties, if we are to take in these railroad counties, it occurs to me it is eminently proper and necessary that we now cease to strike out; that we include the counties of Pendleton and Hardy and Hampshire and Morgan and the rest. You can see that the streams in Pendleton all tend in this direction and that it is naturally connected with us in interest and location, in every particular.

But it is argued that we ought not to be influenced in our action here by any considerations of what a corporation or people may consider or do in reference to our action. Well, now, it does occur to me, sir, that that argument comes with a very bad grace when it is repeated at every turn and corner that we must conform every action with especial reference to what may be done elsewhere in reference to our action. A gentleman asks, what do you mean by unfriendly legislation towards this great artery of trade, this great connection, this great channel and thoroughfare, the Baltimore and Ohio Railroad Company? Why how can they affect it? I will tell you how. The gentleman from Wood tells you he has been something of a railroad man, as we all know he has been; and he has been looking on there at Richmond for the last ten years, and without a single exception it has been a matter of diligent investigation, striving to see by what means to bring to bear every means in their power in order to affect, cripple and destroy that very interest. Well, I believe he was not down there quite so lately as some of us. My friend from Doddridge and my friend from Monongalia could bear testimony with myself of other matters carrying out and evincing that very same principle. Yes, sir, with clenched teeth they cursed themselves there for having been so stupid as to allow the Baltimore and Ohio Railroad to be built. Why, they said, we have gone and given them a charter and the thing has abolitionized that whole country. And Henry A. Wise and others were debating the thing; and if they had not had other matters that engaged them more directly would have urged upon that convention the repeal of the charter of that road, and would have cut it plumb in two. That would be quite unfriendly legislation, it occurs to me. Now, sir, I ask if that is to be left outside of our control. What will be the limit to which they may not go in unfriendly legislation? I confess, sir, that knowing the facilities and the ability of that people to act unfriendly towards us over here, I should just say that road is not worth anything.

MR. PARKER. What did they do?

MR. HALL of Marion. Why they seceded; and we all broke up and scattered off; and they had not time to do anything else.

MR. PARKER. With the Baltimore and Ohio Railroad!

MR. WILLEY. Mr. Wise and his friends declared that the act of secession of itself did repeal that.

MR. HALL of Marion. Yes, that is a fact.

MR. VAN WINKLE. That they had a right to take possession of it!

MR. HALL of Marion. Yes; that by the very act of secession the charter rights cease to be of any validity at all; and since that they have hauled away the cars and piled up the rails upon it; and that is unfriendly legislation and more too.

Now, outside of this thing we know very well, what they can, and what they will and must inevitably, do, if we are to leave it in their power to do it with reference to our interests; because we know they will be looking to their own channels. Yes, Mr. President; you have been down there at Richmond; you know how they operate there upon these questions. It has been the pet policy at Richmond, time out of mind to manage all their monopolies through this medium of internal improvements. They build up and pull down, create and destroy by means of legislation with reference to internal improvements.

Now, how must we be affected if that channel is cut off? What will be the effect of it upon these people that live upon it in these counties that we are now proposing to take along with us? Why, sir, their prosperity to a very considerable extent depends on that channel of our communication through their country. Well, now, if we are to take any of these counties, I beg that the Convention will look to the fact suggested by the gentleman from Monongalia this morning, that if we are to take any beyond the line in this direction at all, you will see unless we take this county you will be connected with those other counties by a mere slender neck. You will have, as it were, but a few miles across there. A line of a few miles will cut off all the counties you include beyond that. That would be injurious in many respects. It would be injurious in substantial respects to narrow down to a mere neck; and unless there was some good reason for it we ought not to place it in any such position. And every reason and consideration is that it shall be included in with these other counties. If you include them and leave out this county of Pendleton, you leave it barred from the other counties, by barrier mountains between it and Highland, cut off in that direction; cut off in another by a chain of mountains dividing partially the Valley of Virginia; cut off on another side by a line you have already adopted including the 39 counties; on the other side by the line you now propose to establish including the other counties you propose to include. So that you absolutely bound it and cut it off from every people with whom it has any connection whatever. Now that is unjust; and you refuse to let them say whether they will come or not. And it occurs to me that my friend from Cabell, when he declares and repeats that the people do not want to come ought to remember that we only ask them to speak on that question and say whether they do or do not want to come. If they do not want to come, why so be it. But I feel very much inclined to introduce my coercion amendment, and take them *nolens volens*. I am decidedly in favor of it; though I do not want to introduce an amendment of the sort; but I make the suggestion.

MR. DOLLY. I will second the motion.

MR. HALL of Marion. Now, sir, let us cross this point. Let us extend our line so as to include Pendleton, Highland, and Frederick.

THE PRESIDENT. I would remind the gentleman of the fact that the question is on the motion to strike out the county of Pendleton.

MR. HALL of Marion. Yes, sir; and upon that very question I wish to show why we should not strike it out. I want to show why we should include it, and that we cannot retain it without those other counties proposed to be retained in this resolution. If we do retain any of the others we must retain this; and it necessarily drives us into the question whether we are to retain any of them. Well I believe this body has decided it would not strike them all out. Whether that has reference to the two represented on this floor alone or not I do not know. But I maintain we must do one of two things: we must take all of the rest of the counties in this resolution or none of them. If we are to take them in detached parcels and proceed to take a county here and leave one there, that will be so situated as that it will be cut off from every section with which it has any community of interest; and there were no other considerations, the very position that Pendleton would be made to occupy would be a sufficient reason to influence our action when we take into consideration the fact that that people are now tied down under the power of the rebel bayonet, unable to speak and unable to act, with a history in all the past showing that if they could act they would be here asking to be with us. And if they were here, asking to be represented on this floor would you exclude them? I apprehend not. I know considerable latitude was extended in other quarters to persons who came here without the formal authority; and I apprehend these persons with equal favor; because I do not think this body would act differently towards one from what it would towards another. Then if they were here, you would hear them. If there were representatives here, although not formally members of this body asking would you not be ready to give them the privilege? And you know the reason, they are not here; and ought you not the more sacredly look to that interest and give them an opportunity to speak? It occurs to me their very situation appeals to us, to our sense of justice, to our knowledge of their past history, and to our consideration for their future interests and destiny. And what do you propose when you leave them out? Why, sir, it is not out for a day, for a time; but you place them beyond your reach; you cannot open your door any day and say, come in again; we have thought better of this thing; we find you want to and ought to go along with us. We cannot then throw open the door and say, come in! No, sir; when we fix our boundaries, there are our boundaries; because hereafter you will have to have the consent of the legislature that will be composed of this same class of persons who would cripple and destroy your Baltimore Company and every other company and institution that would further the interests of this country. Therefore you need not expect you could get that consent; and you need not expect that Congress on account of the expressed wish of one, two or three counties and the State of West Virginia is going to violate any of her constitutional duties. Congress cannot do it—will not do it; therefore you by excluding them now exclude them forever.

Now, I beg gentlemen to remember that we would not like to be so dealt with. Leaving out of the question of having them for our own interest, I ask gentlemen to consider who of us would like to be so treated. If we were asked — if any single individual were here and were to say, let our people have a chance to speak when the rebels are driven away, would you turn your back on them? I trust, gentlemen, we will not do so; that we will not take advantage of their misfortunes; that we will allow them at least to speak.

It was said upon this question that this county does not touch the B. & O. R. R.; but I do not wish to discuss that. I wish to confine myself to the simple question to strike out this county; but I cannot very well reach the real arguments bearing on this case without arguing it as a whole; and, therefore, I suppose I am in order when I argue that you should not strike out this because you should take the whole of them in together.

Now, it was said we have other channels by which we may reach the same or other markets—well, now, I beg gentlemen to remember this one thing; we are not only as my colleague said peculiarly an agricultural people and have a fine grazing country, but we know that our hills— and they are many and large—are full of mineral; and there is no point along this road where they are not mining and making these minerals a source of great prosperity in our country out of an element, that, if we have not this direct means of communication, must lie there as worthless as though they were but common rock. Well, now, why is it that we are not all along this road carrying our coal to market. We do whenever the rate of transportation is at what we call the low figure. I know we do in my county, and I suppose from all the counties along the road. Yet whenever they have on what they call their winter rates, it will not pay to transport it and then the whole work stops. The coal along this road will not bear transportation to market to bring it around in this direction; and therefore the destruction of that road is the destruction of that interest because if you cannot carry it to market it is worth nothing. I name that in connection with the suggestions and figures given by the gentleman from Wood, showing that not only in our cattle, in our grain, and all products of that sort, but in the very minerals out of which our hills are made we have wealth if we can carry it to market. And yet it is proposed to cut off this only outlet and throw ourselves into the hands of an unfriendly power and destroy this market. Well now, we know that the very business that is transacted by this communication through these counties that we propose to include constitutes a very material part of the prosperity of that people. They have been in constant communication with our people, and their interests are with us, and our very business has created business for them that has made them more prosperous than they would have been; and it must continue to be so in the future.

And not only so, but there I go on to repeat that argument (and it is a potent one made by the gentleman from Monongalia) that the very fact that we take in these counties whose constant communication is with that people beyond, and with the people by whom they are surrounded there all the way on the border, it is securing an interest and will secure the cooperation not of a corporation—and I do not care whether those who compose this company are secessionists or not—I do not know how that is, nor do I think it at all material, or how it will be at Baltimore. We know what the fates have decreed with reference to this thing; and whatever secession element has ever been in or about that road or city, they have long since found it would not pay, and I will venture we will hear no more of it. But by those means you secure not only the cooperation of Baltimore but the interest and cooperation of all this whole country. Because the States of Ohio and Pennsylvania, as was stated by the gentleman from Wood, have been so much interested that they have been petitioning that this road be opened. I say this road has a hold on the interest—and, by the way, the nearest way to a man's heart, is to touch his pocket—that it will secure the cooperation of the whole surrounding extent of country, not only Maryland, but of the State of Ohio and every other community with whom we trade. The trade of the country is drifting in that direction. It is the proper and legitimate channel of trade; and every part of the whole people are interested in that thing. It is no use to say we will not be in the hands of an unfriendly power; because that thing will be as inevitable as fate itself if we suffer the thing to fall in that way.

I trust we will act first with reference to our own interests and that we will be just to these people themselves. Seeing their present condition, their necessities, the very fact that they cannot speak for themselves, should make us more careful not to do anything that shall prejudice them, and to remember that when we exclude them now we exclude them forever. We never can repair that injury done by the act of this day if we exclude them; and therefore it becomes us to look after this thing calmly and be careful while we look after our own interests that we be just to this people who ask us to aid them.

I trust we shall not strike out this county, but that the motion to do so will be voted down, and that we shall then act on the resolution. I should indeed be glad to see the resolution modified as to some at least if not all the counties in it, that they should be taken in without referring it to a vote of that people. As I before said, I would not include a people against their will and interest. There is not the same reason for that course of proceeding in this as in the other because I think the chances that they may be enabled to come to the polls at the time proposed are much greater than in the other case; yet there is a possibility they might not be able to, and for that reason I would be in favor of the amendment suggested or something else that would accomplish the same purpose.

MR. SIMMONS. I have not taken the floor to consume time, but I feel it my duty to say something in behalf of the benefit and welfare of the people of Pendleton county. I live in the county of Randolph, which is a sister county; and it seems it has been greatly doubted here among some of this convention whether there is a loyal citizen in the county of Pendleton. From the best information I have, I can say there are a number of citizens in that county who are loyal citizens; and I am informed by the gentleman from Hardy that there is a number of citizens from that county now in the company to which he belongs stationed at Greenland, and he informs me that their cries are daily going up that he might make some effort to save them in this Convention. I think the gentleman from Hancock asked the question, Who had ever heard of a man in the county of Pendleton that had expressed a desire to be with us. I am satisfied there are many that have expressed that desire and their cries are daily going up that we may save them. If we are seeking our own interest and expect a foreign immigration here and men to invade our land with capital, why the counties of Pendleton and Hardy undoubtedly have as great water-power as any in the proposed new State. If we are seeking our own interest, it is greatly our interest to include the counties of Pendleton and Hardy, at least, if we seek no further. As to my part, I am for extending the line as far as possible. As has already been said, we should undoubtedly take in every county that embraces the Baltimore and Ohio Railroad; and as to my part, I must vote for it. I am not like the gentleman from Cabell that wishes the line so near me. It seems to be understood here that he has been often seeking even to make an escape from his own county when he thought that was in danger; and if that was the case with myself, I should want the line as far from me as possible.

I did not take the floor to make a speech, but felt it my duty to speak in behalf of the citizens of this Pendleton county. I think their members were in the convention which met here on the 11th of June. If Randolph had been represented at that time—there could not have been a vote cast in that county; and the gentleman that represented her in that convention (Mr. Crans) came from there with a great deal of difficulty. There is Tucker just adjoining; and about that time an election was held in one corner of that county by the aid of a military force, in order to elect a member of the legislature. The county of Tucker, I understand from good authority, is now becoming more loyal than it was at that time. I saw a petition presented here some days ago signed by those who were secessionists of that county in order to release some prisoners from the Athenaeum here, and they solemnly declare that they will support the Constitution and Union and that they are in favor of the new State and that they will no longer take up arms or aid and abet the Southern Confederacy.

MR. STUART of Doddridge. I feel it a duty on my part to speak in behalf of Pendleton. I understand a portion of these people are now fighting our battles in the cause of the Union against the Southern Confederacy. But there is one little circumstance attached to Pendleton which whenever I think of it, moves the innermost regions of my heart. Last winter, sir, in the Richmond convention, while I considered it necessary for my safety to leave the city as fast as I could, the representative from Pendleton, Henry H. Masters, who had stood side by side with Union men and voted against the ordinance of secession—who fought the battles there with us, took me by the hand, and says he, "Stuart, you are going home"—and it is time I was going home with an illy defined plan to know what course to pursue—"Your people will repudiate the act of this Convention"—and the tears were struggling down his face—"We may be compelled to submit, tied down, because the armies and soldiers will be rushing all over the state"; and says he, "when you are repudiating the action of this convention and forming your new State, do not forget the county of Pendleton. Our interest is yours, and our all is with you; and if you cut loose from us we are lost." This is the sentiment of the representative and that is true, because I now understand they are fighting our battles.

Gentlemen, I do sincerely hope this Convention will not strike out this county from that list.

MR. CARSKADON. I get up merely to make a statement of facts to show that their trade is entirely with the counties of Hampshire and Hardy to the Baltimore and Ohio Railroad. I say their trade is there in my county and has been ever since I can recollect. It used to take two men to steer a wagon down their roads, they were so bad. But now they have much better facilities, and now their entire trade, as it regards grain and stock, comes to the Baltimore and Ohio Railroad; and in that respect their interest is identified with us. Therefore, I think it would be extremely unjust and unkind in this Convention not to give them at least an opportunity to come in. Therefore, I feel it my duty as well as desire to vote against the amendment.

The question was put; and Mr. Ruffner's motion to amend by striking out "Pendleton" was rejected.

THE PRESIDENT. The question is on the passage of the resolution as amended.

MR. STUART of Doddridge. Now, Mr. President, as I have not offered an amendment, I feel it, sir, my duty, upon the argument I have heard here and the light that has been thrown upon this subject compelled to offer an amendment to this resolution, and that is to strike out all after the word "State," in the 22nd line, —to strike out the proviso.

MR. WILLEY. The effect of that is to include these counties, *nolens volens*, as I understand it—arbitrarily as we did the Pocahontas and Greenbrier district, without asking or ascertaining their wishes, or will by a submission of the question at the polls. Of course, sir, as I have so fully and often expressed my views on the propriety of that course of proceeding, I merely wish to say that I cannot vote for any such arbitrary measures.

MR. STUART of Doddridge. Mr. President, I must be permitted to say that it was the argument of the gentleman from Monongalia induced me to offer the amendment; because I was really led to believe that every interest I had in the State of West Virginia was tied up in these counties. If they choose not to come in, or if they are so overrun by the rebel forces that they could not have an opportunity of voting at all, thereby we lose that region of country. For self-protection, self-preservation, and for every interest connected with the State of West Virginia, I think it would be necessary to include them within our bounds.

Now, sir, it is unnecessary for me to reiterate the arguments of the gentleman from Monongalia, showing the vital importance of this country to our State. I believe, Mr. President, that I would be willing to waive the amendment if I could have positive assurance that these people would have an opportunity of voting; but I am not assured of that fact. Therefore, sir, I do not feel willing to stultify my own interest on a mere probability, a probable chance of their having an opportunity to come in.

MR. WILLEY. How would the suggestion of the gentleman from Ohio do? Would not that suit the gentleman from Doddridge?

MR. STUART of Doddridge. Well, if I understood the suggestion of the gentleman from Ohio, it was to insert a provision in our Constitution leaving the question with the state legislature.

MR. LAMB. Excuse me—the gentleman is referring to a different matter altogether from that referred to by the gentleman from Monongalia. The amendment I suggested was to insert after the words, "third Thursday in April, in the year 1862," the words, "or at such later day as the Legislature of Virginia may appoint."

MR. WILLEY. I referred to that.

MR. LAMB. So that if it should be impossible to take a fair expression of the sentiment of the people on the day now mentioned, the legislature might provide for giving them another chance, by appointing a day at which that opinion could be taken.

MR. STUART of Doddridge. I understand the suggestion of the gentleman perfectly well; and if that clause in his report there was adopted by this Convention and had been so modified that the time should be extended, then, sir, that would waive the necessity of my amendment.

MR. CALDWELL. I would suggest to the gentleman that he withdraw his amendment and let the gentleman from Ohio make his proposition, extending the time and leaving the authority to the legislature.

MR. STUART of Doddridge. I am willing to waive anything I have to say, and hear what his proposition is. I withdraw my amendment, for the present, but expect I will renew it very shortly.

MR. LAMB. I will then move to insert after the words "third Thursday of April, in the year 1862" these words: "or at such later day as the Legislature of Virginia may appoint."

SEVERAL MEMBERS. Question! Question!

THE PRESIDENT. The question is. . . .

MR. HERVEY. Mr. President, it strikes me if the legislature should fail to appoint a day, we would be at sea in this matter. I shall therefore vote against the amendment.

MR. POMEROY. Suppose the legislature adjourned before that time, with a fair prospect that the vote could be taken at the time appointed, how is the legislature to be called together to fix another day? And when are we going to get this matter before Congress? I believe it is a general opinion here that delay is dangerous. When would the legislature appoint the day? We do not know that everything will be cleared off of them. We would get at this matter far better if we would take up the proposition of the gentleman from Monongalia, and then the counties would stand on their own footing.

MR. LAMB. I do not suppose there is the difficulty in the amendment which the gentleman from Brooke seems to think there is; but the objection makes it necessary to explain what I suppose to be the operation of it. The new Constitution would be prepared, and I presume from the tenor of these resolutions it was expected it would be submitted on the third Thursday of April, not merely to the people of these counties but to the people within the fixed boundaries, these other counties having the option to vote on it as they pleased. As soon as it has been submitted to the people for ratification or rejection, the Constitution then comes before the legislature for its consent, if it has been ratified. It is absolutely necessary to assemble the legislature within a week or two after the day that is appointed for submitting the Constitution for ratification. They will be here within a week or two after that period. If these counties which are named in this resolution had been unable to vote on the question, the matter would then, if my amendment is adopted be referred to the legislature to fix some other day which would give them an opportunity of voting. The resolution is proposed in contemplation of that state of things, not to postpone anything; for it is not my intention to postpone anything in regard to the new State—nor of interfering with the organization of the new State at all. I have no such intentions. But because upon the supposition that the legislature is to assemble as soon as it can possibly assemble after the question on ratification has been acted on by the people, they will have the whole matter before them. The matter may then be presented to them why these counties really desire to be a part or parcel of the new State, but incidental circumstances, the presence of armies may have prevented a vote on that subject; and it will be a consideration, if the legislature have the power to do it, properly addressed to them in such a case, shall we appoint another day at which the voice of the counties can be heard? I do not understand how this can be postponing or delaying anything. You form your Constitution, submit it to the people for ratification. It applies within certain boundaries absolutely. It can go to Congress in that shape, and be acted upon by Congress, and without any unnecessary delay. Or, at all events, when the legislature assembles to give its consent to the formation of the new State, to receive the ratified Constitution, and say whether it will assent to it or not, they can have a vote, if a vote be possible, in those counties within a week or ten days afterwards, that is, if the armies are out of them. Then it will be for them to act, at least with a full knowledge of events which we cannot anticipate or foresee.

MR. POMEROY. I am very fully convinced that this amendment ought not to prevail. I am, and I hope always will be opposed to bringing any people in here to submit to a Constitution without a voice in making it. Now if I understand the gentleman from Ohio right, when this vote is submitted to the people on a certain day, and if the people ratify that Constitution and it comes up before the legislature and they gave their assent to it, they would propose to these to vote whether they wished to come in, but would not submit it to a vote on the Constitution at the same time. But suppose you would, and your Constitution had but a small majority of three or four thousand votes, do not you see they could come up and break down that Constitution after all your labor. Here is the county of Jefferson, giving two thousand votes, and Frederick giving nineteen hundred, and others giving large votes: they could vote down the Constitution, and if you would not let them vote, you would be changing all your county as well as state plans and give them no voice whether they approved of it or not. Berkeley has nineteen hundred votes, Morgan six hundred, Pendleton nine hundred. Here is an aggregate vote of six or seven thousand. Well, this Constitution will meet with opposition in *our* country—men that will come up against the best Constitution that can be made and vote against it. The vote may be a small one, and it may be very close. I would not leave our labor to a contingency of that kind. I did not, I must say in all kindness, intend to intimate that the gentleman from Ohio wished for delay. Not at all. I believe he wishes as I do to proceed with the work of organizing the new State and as rapidly as possible. But I was speaking of the fact that the legislature will not be in session at that time and that it creates delay. And here is the dilemma: You must either let them vote on the Constitution or else they must come in and submit to one they never voted on.

MR. PARKER. As I understand the ordinance of the Convention by whose authority we are assembled it was very carefully prepared to carry this thing through. They therefore proposed the territory that should be included absolutely and separately proposed that which should be included conditionally, and defined when and how those conditions may be complied with. They then provided for the election of a Convention and limited them to the territory of the thirty-nine counties; the proposed State to cover those counties.

MR. HALL of Marion. With the leave of the gentleman, unless the motion is to repeal and reconsider, I submit that this is out of order.

MR. PARKER. I am coming to the gentleman's amendment.

That convention fixed how much territory it shall embrace and defines it. That is the new government that convention prescribed, and the duty of this Convention is to make a government, or a constitution over that proposed territory. All this was to be done and on the 28th of December this Convention was to submit its work to the people. That is what they put in the ordinance. Now I object in toto to going outside of the specific duty with which this Convention is specifically charged. Since the ordinance was made, the people have spoken with an unanimity unparalleled, in a voice of thunder "Make the new State! Go and make us a Constitution!" according to the ordinance. That is the voice of the people on the ordinance. Now I object to any mode that shall take this whole matter out of our hands and indefinitely postpone it by placing it in the hands of another power, to wit, the legislature. We move it on out of our hands and say to the legislature, now get this people to vote on this question by the 19th of April if you can. If you cannot, by some other time. Well now, as I understand, that matter has got to be suspended; and as I understand the gentleman from Ohio, suppose he goes on and submits this Constitution to the people of the thirty-nine counties: well we get the vote, and then the Constitution can stand. We have completed the work. If those others then choose to come in and adopt our Constitution as we have made it, or whether their votes are to be counted in determining the question whether a majority is for the Constitution or against it—all these points are material. But this matter, as I understand it, cannot go before Congress until votes have first been taken by these proposed counties. The vote must be taken by those people one way or the other, either adopting or excluding. After that is done it is to go to Congress. That I understand to be the proposition.

Now, I should certainly feel that I was doing wrong, to go and pass out this trust that has been confided to us and hand it over to another power and have them to take charge of it and have this vote taken when it is evident the enemy is driven out. If I would leave it in that way without assuming to be interested in it I should never expect the new State would get through. There would be something or other in the way, and it would necessarily have to be postponed by the legislature over which we have no power, and they could let it lie—a matter which was especially, confidentially entrusted to this body.

MR. VAN WINKLE. I understand the argument of the gentleman from Cabell to be this: that the Convention of June had fixed one set of boundaries and this Convention was about to fix another. I think the latter very likely, sir. But in reply to him and the gentleman from Hancock, I can remove the difficulty they are laboring under in reference to any likelihood of delay to be caused by this proceeding. This being a state erected out of another state must define its boundaries in its Constitution or schedule. That will be necessary because neither the legislature nor Congress can give its assent unless they know what territory is to be included in it; and one reason for pressing this boundary matter at this time is that that matter may appear in the Constitution in its proper place, or in the schedule. The proper disposition of this report will be to refer it to the Committee on the Schedule to report proper provisions under the general head of doing what is necessary to put this Constitution and government in operation. In the schedule which will be put on the last thing, provision in reference to how these additional counties are to be treated will appear; and when that time comes it may be the very difficulties we are anticipating will be removed; or if not, care will be taken I have no doubt in fixing that schedule that this shall produce no delay. It can be so framed unquestionably that both the legislature and Congress can give their assent provided these counties by a certain day signify their assent. Or if not that provision, some other might be devised which would meet the case. I think it better on the whole for us to go through with these resolutions now before us and decide what counties we are willing to admit under any circumstances; and I am well satisfied that provision can be introduced into the schedule, or by the Constitution either, by which all possibility of defeat will be obviated. The members of the legislature have as much at heart the erection of this new State as we have. Although nominally and really the legislature of the whole state, it has turned out under the circumstances that the members who are acting and composing that legislature are wholly from within the bounds of the proposed new State—almost wholly. There are some from Alexandria, Fairfax and so on. But, sir, they can certainly be trusted in reference to the steps they take to see that they do not necessarily defeat this application. They can so provide that when the time comes for them to act under the amendment of the gentleman from Ohio, if they have reason to apprehend that a further delay about taking that vote would defeat the matter in Congress, they would not order a subsequent election; that if these people do not get an opportunity to vote on the day fixed in the resolution, the legislature may, if circumstances seem to open the door for it, fix a later day; and with their regard for the success of the measure, that they will fix such a day as will not tend to defeat it. I think we may rely on that body. We go on now and fix these counties and decide which we will have, and let this report go to the Committee on the Schedule, and at the proper time they will bring up such a provision in reference to it as they think will suit the case, without risking anything on the ground of postponement. I think, sir, this amendment is a very proper one. It has been accepted in lieu of one which I should like to vote for if I felt sure about it; but it stands almost as a compromise, and in that way commends itself to the members of the Convention. I hope, sir, the amendment, therefore, will be passed. The members will be satisfied that the thing will still be in their own power while the Convention remains in session, and that if they trust anything to the legislature, they place it in hands where they know it will be safe as it is here.

MR. WILLEY. If I understand one of the objections of my friend from Hancock, it was in the result of the vote in those counties to be included, that there might be a vote against the Constitution, and added to the vote against it in the thirty-nine counties, it might lead to its rejection entirely. I do not so understand the object of the resolution. The vote in these proposed counties is not to be counted with that vote at all. It is to be ascertained whether they wish to come in or not; and if in a majority of the counties the majority of the votes cast are against coming in, why there is no difficulty. If a majority vote for the Constitution and thereby come in, why of course they but add to the majority in favor of the Constitution—come in with the Constitution and add to the majority in the thirty-nine counties. I understand the object of the resolution to be simply to ascertain the sense of these counties by themselves, as a distinct separate district—to know whether they wish to come in. If a majority are in favor of coming in we get the benefit of it. If there is a majority of votes against the adoption of the Constitution, they cannot be brought in.

MR. STEVENSON of Wood. I would like to hear the amendment.

The Secretary read it as follows: "After the words third Thursday of April, in the year 1862," in the 24th line, insert the words "or such other day as the Legislature of Virginia may appoint."

MR. LAMB. I would like to make a remark or two, to see whether I understand what are the views of the Convention in regard to what may be a material point. We will fix a day—whether it be the third Thursday of April or not—at which the vote upon the ratification or rejection of the Constitution is to take place within the fixed boundaries, at all events; and I have been acting, and still am, under the impression that the vote which is to be taken on that day decides the question of the new Constitution; that if a subsequent vote should be taken in the territory which is conditionally to be annexed, it does not affect the question of the validity of the Constitution within the fixed boundary, at all, and cannot. The gentleman from Hancock, if he had thought a moment would have seen that it certainly could not lead to the rejection of the Constitution, because on the very terms of the resolution if there be, as he seems to think may be the case, a close vote within the forty-four counties on the question of the ratification of the Constitution. . .

MR. HERVEY. "The gentleman from Hancock" all the time (Laughter).

MR. LAMB. If there be a close vote within the forty-four counties (The speaker evidently meant to speak of the thirty-nine counties—Reporter) and there be an unanimous vote in these counties in favor of rejecting the Constitution, that unanimous vote can have no effect whatever, because by that very vote they are not part of the new State.

Another thing which he urges is that the amendment would propose to subject them to a Constitution which they had no voice in making. That objection lies of all these propositions. Those counties have no voice in making the Constitution; and any plan upon which, upon any vote they may give, they are to be admitted hereafter under the Constitution, is subject to that objection. But we at least do not propose to bring them within our limits without submitting that Constitution to them. We do not propose, as to these counties at least, to say you shall come in under a Constitution which you do not approve. We submit that very Constitution to them for approval. But whether the third Thursday in April be or be not the most proper day for taking the vote on the ratification of the Constitution, I have not yet made up my own mind. But the resolution is within the control of the Convention from the beginning to the end of it. On the last day of the session we may alter, and probably may find occasion to alter, a great many things we adopt during the progress of the Convention.

MR. POMEROY. I really do not understand yet what the gentleman wishes to do. Now he says he would submit the Constitution to these people and if they vote for it, very well; but if they vote against it, he is not going to count that in the vote. Now would men come up and vote if you told them that? If you vote exactly right we will count your vote; but if you vote wrong, we will not count it. And is it the Constitution they are going to vote on or are they going to say, for the new State, or against it. Are they going to be permitted to vote both on the Constitution and whether they want to come in the new State or not.

MR. LAMB. The resolution, of course, will speak for itself. The vote in form here, the member from Hancock will observe is a vote on the adoption of the Constitution. Really and practically, it is simply a vote to allow these people to decide whether they will come in as part of the new State under the Constitution we adopt for the balance of the State. And as to the vote counting in one case and not counting in the other, the simple question for them to decide will be, Will you come in under the Constitution which we adopt for the balance of the new State? If they are satisfied with that Constitution—satisfied to join us under the Constitution which we deem proper for ourselves, they can say so. But it really cannot affect the question if it is not taken on the third Thursday of April, of whether the Constitution shall operate over themselves but whether it shall operate over us. That will be decided by the vote taken on whatever day is fixed for taking it, by those who constitute the new State.

MR. POMEROY. I would like to say by way of explanation—no desire to make a speech at all—that, in my opinion, kills the whole thing before the people; and these gentlemen that have advocated the matter so strenuously will find if I am any prophet, from the vote that is recorded in these counties if we give them the privilege to vote down the Constitution, that the ground on which they will do so is that the decision on the Constitution itself is confined to the other counties of the State.

MR. VAN WINKLE. The matter of what effect that vote is to have can be fixed in the schedule.

MR. STUART of Doddridge. I think my friend from Hancock is a little in the fog (Laughter). I want to dispel from the mind of the gentleman from Wood a misapprehension, that I receive this amendment as a compromise in lieu of my own amendment.

MR. VAN WINKLE. You withdrew your own, sir.

MR. STUART of Doddridge. I withdrew it for the purpose of permitting him to offer it, it is true. I cannot vote for any amendment that proposes to extend the time of the submission of this question beyond the present Congress; because then I would be traveling out of the line of my duty to what is the will of my constituents. Now you cannot but see I am a pretty considerable new state man. I am not going to do anything that is going to cripple the matter.

Now even the gentleman from Wood himself has not seemed willing to give this discretionary power to the legislature; because he is for coming in with a kind of a schedule, saying this thing shall not be so and so, this thing shall not be extended beyond a certain period of time. That will not make it answer for me, let the Convention vote on this question as they may. Notwithstanding the intimation of the gentleman from Wood for me to offer my amendment, I do not do it at present; but I have to vote against the amendment of the gentleman from Ohio.

MR. HERVEY. If the gentleman from Ohio could satisfy my mind upon one point, I might vote for it. The regular session of the legislature is ninety days, but by a certain vote it may be extended to one hundred and twenty days. That time expires before the time proposed in this resolution—April. If the legislature acts on it at all there must necessarily be an extra session of the legislature. There is another contingency in the case. That will extend it to one hundred and fifty days, thirty days beyond what this resolution can go.

MR. O'BRIEN. I ask for the yeas and nays.

The vote was taken by yeas and nays, resulting:

YEAS—Messrs. Brown of Kanawha, Battelle, Caldwell, Carskadon, Cassady, Dering, Dille, Dolly, Hubbs, Lamb, Powell, Ruffner, Sinsel, Simmons, Stevenson of Wood, Sheets, Taylor, Trainer, Van Winkle, Willey, Walker, Warder—22.

NAYS—Messrs. John Hall (President), Brown of Preston, Brumfield, Chapman, Hansley, E. B. Hall, Haymond, Hervey, Hagar, Irvine, Lauck, Montague, Mahan, O'Brien, Parsons, Parker, Paxton, Pomeroy, B. F. Stewart, Soper, C. J. Stuart, Wilson—22.

So the amendment was rejected.

THE PRESIDENT. The Chair does not recollect as to any provision in the rules for this case.

MR. VAN WINKLE. Well, sir, it requires a majority to pass, and failing to get that, of course it is lost.

MR. SIMMONS. I move to adjourn.

SEVERAL MEMBERS. Oh, let us finish this.

MR. SIMMONS. I withdraw it.

MR. STUART of Doddridge. Then, Mr. President, I have to now submit my amendment, to strike out all after the word "State," in the 22nd line.

MR. SIMMONS. I now renew the motion to adjourn.

MR. STEVENSON of Wood. If there is to be no discussion on this amendment it would be better to take a vote.

MR. SIMMONS. I withdraw the motion.

MR. BRUMFIELD. What is the question?

THE PRESIDENT. It is on striking out after "State," in the 22nd line.

MR. STUART of Doddridge. I do not propose to discuss my amendment at all, sir. I only ask for the yeas and nays.

MR. IRVINE. I would like to present my views on this question before it is finally decided.

MR. STUART of Doddridge. Mr. President, I move we adjourn.

The motion was agreed to and the Convention adjourned.

XIV. THURSDAY, DECEMBER 12, 1861.

The Convention was opened with prayer by Rev. Thomas H. Trainer, member from Marshall.

MR. VAN WINKLE. Before the regular business is taken up I would ask the Clerk to read the 35th rule. I do it in no invidious spirit, because I am satisfied many members are ignorant of it.

The Secretary read the rule as follows:

"35. When the Convention is about to rise, every member shall keep his seat until the president shall have announced the adjournment."

MR. WILLEY. Mr. President, I desire to observe the rule under which a member has no right to absent himself from the sittings of the Convention except upon conditions. Circumstances, I think, make it necessary that I should be absent for eight or ten days—unfortunately duties in two different bodies. I wish to go to Washington to-night, sir, to be absent eight or ten days and respectfully ask leave of absence for that length of time.

MR. IRVINE. Mr. President, it is my purpose only to argue one single question. That is whether we would be transcending our powers to extend the boundaries. . .

MR. WILLEY. Will my friend allow the vote to be taken on this motion first? or I may perhaps have to leave the body before it can be acted on.

MR. POMEROY. I move that Mr. Willey have leave of absence for ten days.

The motion was agreed to.

MR. IRVINE. Mr. President, I wish to argue the question before this house, whether we would be transcending our powers to extend the boundaries prescribed by the ordinance passed last August, so as to embrace other counties not represented here; for instance the county of Pendleton and the county of Frederick. To arrive at a clear conclusion upon this subject, first I wish to consider this question, Mr. President, leaving out of view for the present that the legislature may give its consent to the exercise of this power after that power has been exercised. Leaving out of view that question for the present, I wish to argue the question whether or not we are transcending our powers in extending the boundary so as to embrace other counties not represented here.

Now, in order to arrive at a clear and correct conclusion on this subject, Mr. President, it is necessary that we should ascertain from what source we derive our power. It will not be pretended that we derive it from the ordinance of the convention that was passed last August. It seems to me clear that we derive our powers from the people that we represent on this floor. We represent the people of the thirty-nine or forty-two counties. We derive from them the power to make a constitution for them. Where do we get the power to make a constitution for the people who are not represented on this floor?—for the people of Pendleton, Frederick and other counties. Do we possess the power to make a constitution for them? If so, whence do we derive it? I think a gentleman on this floor, on the other side of this question, a few days ago, said we were the embodiment of the people; that we could do what the people could do. Then, I say, can the people within these limits make a constitution for the people of other counties not represented on this floor? Even if we possess all the powers that are possessed by our constituents, do they possess the power to make a constitution for the people of five other counties? If they do, they possess the power to make a Constitution for twenty, thirty or forty other counties, it seems to me.

It is clear to my mind, Mr. President, that they do not possess this power; that it would be an assumption of power on our part.

But some allusion has been made to the ordinance of last August, passed by the convention. What effect is that ordinance to have? We do not derive our powers from the ordinance passed last August; but that ordinance, Mr. President, has the effect to restrict and limit our powers to the boundary prescribed by that ordinance. Can we go beyond that boundary without the consent of the Legislature of Virginia or without the consent of the people occupying the territory beyond the limits of the thirty-nine counties? That convention, Mr. President, represented the State of Virginia. We cannot include one inch of the territory of the State of Virginia without obtaining the consent of the State of Virginia. Can we extend the boundary so as to include the ten other counties without the consent of the State of Virginia, and without the consent of the counties to be included? Have we not as much right to include ten counties beyond the Ohio river?

But then this objection, so far as the consent of the state is concerned, is to be obviated by obtaining the consent of the legislature after the power has been exercised. That is conceding that we at this time do not possess the power. It seems clear to my mind, Mr. President, that we have no authority to include within this boundary any counties beyond the line prescribed by the ordinance of the convention, unless we place it on the ground of absolute necessity. I am in favor of including Morgan, Berkeley and Jefferson. I place this upon the ground that it is absolutely necessary that we should have those three counties in addition to the counties of Hampshire and Hardy; because without those three counties, unfavorable legislation on the part of Virginia might mar the prosperity of the new State as well as of the State of Ohio and of some other states. I think then it can be justified on the ground of necessity, and I place it upon the ground of necessity—that we must have these three counties; and I shall vote for the proposition of the gentleman if it is confined to those three counties. But I do not think that the counties of Pendleton and Frederick ought to stand on the same footing. We cannot contend that it is absolutely necessary for the welfare of the new State that the counties of Pendleton and Frederick should be annexed to the new State. I do not think we possess the power to annex them. I think we can make the other three counties an exception to the general principle on the ground of absolute necessity, and upon this ground I shall rest my vote for the introduction of those three counties.

MR. VAN WINKLE. On a certain occasion, sir, in the House of Representatives of the United States, a member from the State of Louisiana got up—in the old times, it was—and made a speech most bitterly denouncing the operations of the tariff. He then came to deal with the subject of sugar, sir, and thought by all means a good heavy duty ought to be laid on sugar. Old John Randolph, who as everybody knows, had some queer ways about him, got up and said he thought the gentleman had made a perfectly suicidal argument, because what he had said against the tariff killed what he had said in favor of the duty on sugar, and what he had said in favor of the duty on sugar killed his argument against the tariff (Laughter). I think, sir, the argument of the gentleman who has just sat down, although it does not come perhaps strictly in that category, is very nearly akin to it. If we can take in these three counties for any reason whatever, then, sir, the power is conceded to take in all we please. Now, sir, the gentleman's opinion is not to govern us here. It is the opinion of the whole of us. The gentleman thinks Morgan, Berkeley and Jefferson may properly be admitted. Very well, sir; his opinion ought to be regarded, certainly, and will be regarded by every member. I think Pendleton and Frederick ought to be. Each opinion is entitled to equal consideration. That is the whole amount of it, sir. The gentleman very properly states that we are sent here to represent the people, to make a Constitution. Well, sir, this matter can be narrowed down to a very few words. We are representing the people who desire to have a new State; and it would take a power greater than exists anywhere except in the people to prevent us from making that new State to suit us. When he talks about the limited power of this Convention he must include everything, because this Convention in fact has no power. It may ask for informal meetings to be held in each county, but they can give no such election legal force or effect. It is therefore that we have had to resort to the state authority. When they permit us to hold an election under the sanction of the law, to vote and make returns with the proper officers, it means something. If we had decided upon these meetings, with a legislature in favor of us, the course would have been to call a meeting in each county, and in that meeting to have sent delegates to a Convention, the same as to a political convention and nothing could have hindered us. Then, sir, after we had made the Constitution to suit us, ours is but a proposition. We propose to erect a new State—and is there any harm in it? Cannot we propose what we please? Then, sir, if we wanted to have a vote on the adoption of the Constitution, that must be again done in an informal way. They must ask the people to assemble and express their sentiments pro or con on the subject. Not a thing can we do if the question is to come down to any power that is vested in this Convention. Well, sir, a lapse of four months has transpired since the action of this August convention. Is it not possible that there may have been some change of circumstances in that time? We may have some new light; and it is entirely possible we may be much better able to discuss and fix upon this subject than that convention was, not on account of superior ability but because the difficulties then surrounding some questions have been partially removed. I think every gentleman will admit that we do know some of us who were members of that convention tried to get this territory included. And shall we for a mere technicality—for the mere sake of a county court practice—forego the opportunity presented to us of making this State, by this extension of its limits worth something when it is made? Shall we forego the opportunity of placing within the territory and under the authority of the State we are about to erect and of fostering that great improvement that is so dear to all of us and on which our very prosperity depends? And then, sir, while we propose to take these counties that lie together, if as the gentleman thinks, we may take these three lying on the border, are we to take this little neck of territory and not take the adjoining county of Frederick which binds them together as it were and makes them a continuous territory? Why, sir, it might easily be shown that Frederick is as important to us in connection with these business interests as either of the others. The southern terminus of the Winchester Railroad is in Frederick. It is a branch of the Baltimore and Ohio Railroad—a valuable branch and feeder it will be to it one day. We are interested in having that road maintained by every source of prosperity it can unite to itself; and to say we are to limit ourselves to these three counties through which this road passes, while those immediately adjoining may have as much control over its business as those three through which it runs, will not be wise or statesmanlike. The idea that county lines are anything in a matter like this is a mistaken idea. Counties are a mere subdivision of territory. The question presented to us is not whether this county or that is to come in. The designations of the Convention, although apply to districts, although for convenience counties are named. We consider that a certain scope of territory ought to be added to the new State. As this resolution now stands, sir, it appears to take the vote of a majority of the inhabitants within the district proposed to add, and for greater certainty, on account of the peculiar state of things it is added that there shall be a majority of the counties. That is to insure as far as such things can that there shall be a tolerably full vote—that the vote when got should be an expression not of the inhabitants of the county as such but of the inhabitants of the district. Gentlemen speak of counties unrepresented on this floor. Members on this floor answer for a dozen counties, while we have no sort of evidence that any one of them was elected. Yet we have taken them in. Thirty-nine counties were put in the ordinance by the August convention, though some of those counties were known to be opposed to this movement. Then, sir, we apply to these additional districts the very principle that the convention of August applied to the thirty-nine counties. They put them in one district. They had not even a provision that a majority of all the votes of the counties should accede to it. They said a majority of all the votes cast within the embraced by the thirty-nine counties should bind them all. For what reason, sir, are we now to alter the very principle that they have taught us, and assume another, that every little county may defeat the whole? Sir, you can bring it down to every road precinct. You may say that every incorporated town is to be consulted, and if that town of perhaps five hundred to a thousand population does not accede the votes representing twelve hundred outside of it in the same county are to be rejected. The principle is just as feasible as the other. They are only subdivisions made for the purpose of convenience. It strikes me, sir, it is almost too late in the day to raise this question. The Convention by a three-fourths vote yesterday determined those counties should be admitted. On a previous occasion they have determined, to put in others without giving them the privilege of saying whether they wanted to come in or not. Following the action of the August convention that has been determined by a considerable majority, and it appears to me it is too late to raise the question of authority, when we come to deal with these counties, when the friends of admitting new counties have settled the principle that we will take them in whether they want to come in or not.

The question then recurs on the adoption of the whole, and if any gentleman wishes to make the objection, he has a perfect right to make it. But I think the members of the Convention, or a majority at any rate, must be convinced that if this Convention is to be tied down to the narrow letter of the law as contained in the ordinance, with the interpretation given to it here, had better not have assembled—if it has no power over the only subject that it is entrusted with; and that is, to make this State suitable to the inhabitants who are to live in it. Now we changed the day, we changed the name, we have voted in other counties, on three or four different occasions arising on different subjects. The Convention then by large majorities in each case, voted that they have the power over this subject.

MR. POMEROY. My friend who has just taken his seat appears to be speaking on a different subject, or rather different from what I design offering a few remarks upon. I agree with the position he takes exactly about leaving it to the people; but the amendment that is now before the Convention for discussion, is to bring these people in without leaving it to the people at all—but take in these entire seven counties, *nolens volens*, without any vote at all. That is the amendment of the gentleman from Doddridge now before the Convention.

MR. VAN WINKLE. I was replying to Mr. Irvine and went as far as I thought he went. I do not consider that that fact affects his argument or my reply to it.

MR. POMEROY. No, sir; I do not know that it does.

MR. IRVINE. I was arguing the question whether we had a right not without the consent of the counties but without consent of the State.

MR. VAN WINKLE. I misconceived the gentleman's argument.

MR. IRVINE. That was the question before the house.

MR. POMEROY. The gentleman from Wood is all right only that he was not discussing the amendment. Now I am opposed to the amendment of the gentleman from Doddridge for various reasons: on the ground, first, that the people there have given no expression of a desire to be united with us. I am willing they should have an opportunity to express that desire. It is now proposed to bring in these seven counties without asking them whether they want to come in or not—to just throw the line around them, including even Frederick, and all that portion of the Confederate army there, without asking them anything about it. I am opposed to that because they have not said they want to come in, and I think they ought at least to have another opportunity. And besides, it has been argued here ably and eloquently by these very gentlemen that now take the ground that we may bring them in and regard them another tier, already decided to be thrown out, and that all they wished in the world was to let these people say: they did not want to force them out at all. That was the great argument. All we ask is to say to these people you shall be excluded if you say you desire to come in. But now the same gentlemen that argued this way, want to bring them in without asking them at all. The argument was adduced in the case of Greenbrier, etc., that they could not possibly have an opportunity to express an opinion against the time specified. But the argument on the other hand is that a portion of these counties have already expressed a desire, and the others are so made up of loyal men that they can express a desire. Well, then, why not give them an opportunity? Why endeavor to bring a people in contrary to their wishes, if they have a desire to come in and there is an opportunity for them to express that desire? But another reason: if you take these people in without leave to say whether they desire to come in or not you must either let them vote on the Constitution or else say they shall not vote on it. One of two things must be so. Suppose you do not let them vote, is it a matter of justice to include them contrary to their will and then force a constitution upon them when they have not the privilege of voting? But I suppose the other policy would be pursued, to let them vote. Here you will have seven counties casting a vote of eleven thousand. Not only so, but all that army now numbering at least ten thousand men within these boundaries. These soldiers not only vote once, but vote as they did at Harpers Ferry on the ordinance of secession, two or three times. Where is your provision for purging your polls? The soldiers at Harper's Ferry went up and voted and then came back and voted again. But here, it is a well known fact that this Constitution will not meet with the approval of every voter. There never was a constitution made by man of which I have a knowledge that met with the unanimous consent of the people. Suppose the vote is very close in our counties and we barely succeed in carrying it, are we going to have a new state with this hostile vote against it down there? Well, now you are in favor of a new state. Well, but I am not in favor of voting for a constitution, that these men however talented and wise they may be, will not let us have any hand in making. And they would go to the polls and vote against the Constitution. Gentlemen, there are men in other counties represented on this floor, loyal men, who will vote against a new state. And it is not true that because a man is in favor of the new State he will be in favor of a constitution. Men in my county voted against a new state, yet voted to be represented on this floor—voted to send men here to make a constitution for the new State and yet voted against a new state. Man is not always consistent. And here these men would say, strongly as we are in favor of a new state, we will not go into it subject to the arbitrary power of these men that assembled in Wheeling, threw a line around us and included us contrary to our will. We will not let them tear up all our former plans and submit to these new plans; because the plan already foreshadowed does tear up everything in the old organization of the State. All our system of county affairs will be entirely new if the plan that is foreshadowed be adopted. So in regard to our judiciary and legislative departments. It will be so in regard to everything. It will all be new. And here men say we have to submit to a new thing. Men will say talking like this: I have always been a justice and they are going to throw me out by abolishing county courts. And there is no telling what amount of influences will be brought to bear against this Constitution. There may be counties that will give a majority against it represented on this floor. And are we going to hazard this whole thing by this? And why has such a change come over the views of my friend from Doddridge? He was strongly in favor of just submitting to the people and saying, if you desire to, come in; if not, stay out. And now he turns around and says, you shall come whether you will or not, they are so essential to the life of the State. Well there is some of them I am in favor of bringing in, but I want them to come in accordance with the original plan of the committee, or some other. There may be various plans better than this one. I do not believe in coercion in all cases. The doctrine of coercion may be abused, at any rate, in everything. There is some similarity in this thing—coming in and leaving off the old. It is like a young lady breaking off and leaving her man for life. It will never be a happy relation without the full consent of both parties. But it would be a wonderful stretch of imagination to suppose that Winchester would vote in our favor, if the vote were taken today. All that region of country would vote against us if at all; and what evidence have we that the Confederate army will be gone?

MR. VAN WINKLE. Every information from Frederick county leads me to believe that the people there do wish to unite with us. The last news received from that section of the State show a very numerous majority against the ordinance of secession; and I think I can appeal to the gentleman from Monongalia to show that Frederick is all right.

MR. POMEROY. Well, I have no doubt there is an Union sentiment, and I wish therefore to leave it to the people. I have no doubt the gentleman from Wood could have made a Union speech there at one time and received the plaudits of the people, but I very much doubt whether he could do it now and be very safe. At least if I valued my life I would not like to make a Union speech at Winchester at the present time. Circumstances alter cases. Those people are smothered down. There are as good Union men in New Orleans as any man, but they dare not say they are Union men. But why do we try to include these people when they are so surrounded that they cannot express their desire. By the resolution as amended we have got three stricken off, so that four will now bring the whole seven in. Why then should we endanger our whole new state movement by the amendment now before us? I do hope the gentlemen composing this Convention will look at this matter in the true light, and not endanger the Constitution by running the hazard of these people voting. Because in their present excited and turbulent state of mind, and under the influence of the powers that pretend to be the legally ordained powers at Richmond, and with their present railroad connections, they will not vote. I understand from one of the gentlemen that lives in one of the counties that has partially complied with the rule, that they do not wish to come in, but want the people to have another opportunity to say they desire to be in. But here is an amendment that proposes to make them come in whether they want to come or not. Now, I think, Mr. President, I will not weary the Convention further, unless there is something said that calls for remark.

MR. STUART of Doddridge. Mr. President, the gentleman from Hancock says that for various reasons he is opposed to the amendment of the gentleman from Doddridge. The gentleman from Doddridge is friendly to the amendment for various reasons which he will take the liberty of expressing to this Convention in a brief manner. Now, sir, men will differ and there is always a reason for this difference. And now, sir, let us look at the reason the gentleman from Hancock and the gentleman from Doddridge differ and see what the causes are, and draw our conclusions from those causes. The gentleman from Hancock lives up here in the tail, I believe, of the Panhandle. He has a railroad there; I believe he calls it the Pittsburg Railroad.

MR. POMEROY. Pittsburg and Cleveland.

MR. STUART of Doddridge. It runs through this tail up there. He has been subjected to the unfriendly legislation of eastern Virginia. He has felt the oppression of it. They have opposed his railroad and he wants to cut loose from them. He has got his railroad and everything he wants. He is safe; and that is the reason he is not satisfied with the proposition of the gentleman from Doddridge. Now the gentleman from Doddridge has another railroad and he feels as deeply interested in it as the gentleman from Hancock in his. I believe that is the very reason of the difference between the gentleman from Hancock and the gentleman from Doddridge. He wants to secure the protection and interest of his people. He has accomplished his ends. He does not like to endanger the prospect of securing the interest of his county of Hancock by looking to the interests of the citizens composing my district, the county of Doddridge. I am glad, sir, that I feel a little more charity towards my friend from the county of Hancock than he does towards the citizens of my district. I am willing to look to his interests, the interests of those people. I am willing to take a general survey and look to the interests of the whole of West Virginia. What is that interest? Why is it, I appeal to you, that we are here today forming a Constitution for the State of West Virginia and asking for a division of the State of Virginia? I appeal to this Convention to know why it is? What reason do you assign for it? I understand, sir, it is because we are so located, so situated, and our interests are so diverse to the interests of eastern Virginia that it really becomes necessary for our welfare and happiness that we should be cut loose and have a new state, because our trade and commerce are in a different direction from that which the eastern portion of our State wishes to force us into. Now the legislation of the State has always heretofore been looking to force the trade, travel and commerce of West Virginia into unnatural channels. Well, sirs, we want to cut loose for this reason. We say to the world we have good reasons why we ask to dissever the Old Dominion and set up for ourselves. Well, if we do this and draw our lines and cut ourselves off from the other trade, we want to foster and take care of a line of trade that is vital to the interests of my constituents although it may not be so to those of the gentleman from Hancock; because I believe that his trade, and the trade of the other end of the Panhandle up here, does not look much to the trade and travel over the Baltimore and Ohio Railroad. To cut us loose from that or leave it in a position under the care and charge of eastern Virginia and their unfriendly legislation, and they will legislate in such a manner as to preclude the possibility of that company keeping up that road. Thus we cut ourselves loose from all our trade.

Now, it is true as has been remarked here, that we have an outlet down the Ohio and out at the mouth of the Mississippi. We have our western connection now. Every man that is acquainted with the circumstances and situation of the country knows that. Still we cannot compete with the western trade. If we are forced into their market and if we have not the advantage of a nearer market and less freight than the west, we never in the world can compete with them. With the grain growing country along the Ohio we cannot go into their markets; but if they go to ours they have the additional expense of the freights between us. But if we are forced into their market with our produce, we never can compete with them, and it will be the utter prostration of our country. Mr. President, if we are guilty of the folly and hardihood of cutting ourselves loose from these counties proposed to be included by the amendment, the future historian will look back with wonder on our action if we preclude ourselves from this privilege. Shame will attach to us if we put ourselves in a position in which it may be possible we may lose this privilege of traveling the Baltimore and Ohio Railroad. Now the argument of the gentleman from Marion proved conclusively it was the intention of old Virginia to legislate against this road, that the act of secession revoked the charter of the company and that they have torn up our road and are throwing every obstacle in the way possible. And although eastern Virginia may be chastised and her ordinance of secession may not avail her anything, yet, sir, if we cut loose from her she will always have a feeling towards us to cause her people to legislate against our interests to the utmost of her ability. It is our policy and duty as statesmen, as men, to look to the interests of our new State and our future prosperity and greatness; and place this thing if possible out of the reach of these men who have always legislated against our interests, and embrace our friends who have always stood side by side with us in every conflict. I must be permitted to say, in the Richmond convention last winter the counties we now propose to include stood side by side with the northwestern members, and never flinched, never divided—voted for the Union and against the ordinance of secession. When I left the city of Richmond in order to secure my personal safety, I found these men still advocating the rights of western Virginia.

Well, the gentleman says the resolution without amendment submits this question to these people and they ought to be permitted to decide it. I admit frankly that if this would be an opportunity of fairly expressing their sentiments and coming forward to the polls without any obstruction, I would be willing to leave it to them; because I am satisfied what the result would be. But I have not got that assurance. I understand this Constitution must be submitted to the people of the new State, the consent of the legislature asked, and then submitted to the Congress of the United States, during the present session of Congress. That looks to the termination of this matter between this and the first day of June. And, now, sirs, I am inclined to believe from present circumstances and the surroundings of all this matter, that the people embraced in these counties will not have an opportunity of voting upon this question. A part of Hampshire, and part of Hardy may. Supposing they do; if the other four or five do not get to vote at all, you see, sir, that they are excluded. We do not get them, because the rebel army is there. It is argued by my friend from Hancock that because the army of Jeff. Davis is down there in the county of Frederick, we ought not to include these people. That is the very reason I want to include them; because these people have not had an opportunity of expressing their views, and because they will not have the opportunity of voting; because, sir, it is necessary and vital to our interests that we should include them, and it is necessary and vital to their own interests. We have a community of interest. Theirs is ours and ours is theirs; and why not include them? The gentleman seems to think if we include them they will have a right to vote on this Constitution, and they may possibly vote against it. Now, Mr. President, it will be recollected it was the argument in the August convention that we ought not to include these very counties simply from the fact that if we did they might vote down our proposition for a new state. Well, sir, if it had not been for that argument and reason before the August convention that framed our ordinance under which we are now acting they would have included these people. And now see how widely mistaken they were! And now, gentlemen, let me tell you that you will be woefully and wonderfully mistaken when you oppose including these counties because you are afraid they would vote down the proposition. We found that there was no opposition. We found seventeen thousand votes in favor of the new State, with less than a thousand against it. Then, sir, if we are wise and frame a Constitution and submit it to our people, it will be voted for as unanimously as the proposition for a division of the State was voted for. And we need not fear any difficulty in that respect. We need have no fear of these few counties voting against our Constitution. And, sir, if we frame a constitution that is to be so objectionable that we are to exclude part of them for fear they will vote against it, it is no reason at all why we should not include them. We should look to framing a constitution adapted to their interests as well as our own; and I am inclined to think they will look upon their interests as homogeneous.

Now, Mr. President, I deem it unnecessary to argue the right of this Convention to include these counties because that question I understand as having been settled by the inclusion of Pocahontas, Greenbrier and other counties. It does seem to me after the Convention has settled the question once, and by as large a majority as the vote on that question indicated, it is unnecessary to argue against the opinion thus expressed by the Convention. What is the object of it? Now, if there is a motion made here to reconsider and the question came up fairly, then that question would be up for debate. That motion is not before us, and why are we reiterating and arguing over and over again the question whether this Convention has a right to include certain territory peremptorily or not, after having decided it? It is something I cannot understand. But it is intended to influence the minds of this Convention to vote against the amendment I have proposed.

Mr. President, let me say, then, again that I do not think the August convention had any power to restrict us in this respect; that they are no party to this action. Now the gentleman from Lewis said he was not willing to include certain counties while he was willing to include certain others—that to include them we would have to get the consent of the Legislature of Virginia. Well, now, if we cut loose from every county here but the thirty-nine, will not we have to get the consent of the legislature even to them? We are simply taking the initiatory steps here. We are the first party in this move. We no more doubt what the wishes are of the people who sent us here, than the August convention knew. Now I presume the members will represent the wishes and purposes of their various constituents; that they know what the views and wishes of their constituents are; and if the votes and sentiments of their constituents are opposed to including any more territory in the State of West Virginia, as a matter of course you ought to be governed by it. And I must be permitted to say my constituents are in favor of including that which is absolutely necessary for self-protection and self-preservation. Then, sirs, we know what our constituents want, and the convention in August did not know what our constituents would want, because the question had never been put to our people. The question they had a right to put was, do you want to form a new State of West Virginia? That question was submitted; and the very minute they attempted to draw the lines and mark where the boundary should be and that we should not overstep those lines, that very moment they took power upon themselves they did not possess, because it was the people that had the right to apply this question. And now I ask you if there has ever been the question submitted to the people within the boundaries: Are you opposed to the extension of the boundaries of West Virginia. It has never been put. They have never passed on this question. But I understand we come up here advisedly, understanding what their wishes are who want this new State. And yet you desire to tie our hands and say we shall not carry out the wishes of our constituents because the August convention drew the lines and fixed the boundaries and we cannot go outside of that.

Mr. President, just one moment, let me say to the members of this Convention, if by our action here this day we place it in the power of these counties to cut loose from us, or if we take action by which they may happen by circumstances by which they are surrounded to be lost to us, we will look back with sorrow and shame upon our act, just as sure as we stand here this day. Just as certain. Now, why? If we go on and form our Constitution and submit it to the people in these proposed boundaries and those counties are deprived of the opportunity of voting, our Constitution is submitted to the State of Virginia for their consent and then to Congress, and we are received into the Union as a state, with the boundary as marked out not including these counties, then, sir, no future action of this Convention, no future action of the Congress of the United States, no future action of the people of West Virginia can ever include this territory without the consent of the state legislature of old Virginia, and for one moment have you the assurance or most distant hope that the legislature of old Virginia will ever consent to give you one foot of her territory? Never in this world. Let me predict the fact here now this day that if we do not now include this territory old Virginia will never consent to us receiving one foot more territory from her and we will lose that in all time to come. And you will find that she will legislate adversely to the interests of our great improvement which we are interested in more than any other in western Virginia and which identifies us and fixes our interest and trade and commerce different from that of east Virginia, and authorizes us to say our necessities compel us to take this step. We will lose the very object and purpose we have had in view and all our labor will be worth nothing. I would not give one cent, sir, for the State and deny to my people the very right to travel over the Baltimore and Ohio Railroad. Our every interest and hope of future prosperity are connected with it.

MR. STEVENSON of Wood. Mr. President, after listening very attentively to the speech of the gentleman from Hancock and that of my friend from Doddridge, I am more impressed than ever with the truth of that couplet which says:

> "So there's a difference you see
> 'Twixt tweedle-dum and tweedle-dee!"

I think that is all the difference there is between the gentlemen on this question. I agree with both the gentlemen, as the Convention is already aware, from what I said yesterday in regard to the importance of possessing these counties through which this road passes, if it can be done in accordance with the spirit of the resolutions as originally proposed by the Chairman of the Committee. Indeed I would be so far willing to modify this, and so voted yesterday, as suggested by the amendment of the gentleman from Ohio or as was proposed, I think but not offered by the gentleman from Monongalia. Either of these modifications it seems to me, would put the resolution in a better shape for the people who inhabit these counties when the time comes that they can have an opportunity of voting upon this question. But, sir, from what I have heard and been able to discover myself in investigating this amendment it does seem to me it is not judicious to attach it to the resolutions as a condition of their passage. In the first place, I think it will weaken the probabilities of their passage before the Convention. In the next place, I think it is founded on a principle that it seems to me is wrong in itself. But that there has been a great deal said and I do not intend to trespass on the time of the Convention in making any further remarks in reference to it and in reference to this whole question of the right of the Convention to exercise the authority which is proposed here, I design to say nothing. It has been fully and elaborately discussed here by many members of the Convention. But I will take it for granted we have this extreme right of taking in these counties against the wish of their people. Now, admitting that, sir, for the sake of argument—because I do not deem the principle is a very correct one—would it be judicious and politic to exercise that right in the case of these counties? And now, sir, I have only one thought upon that. It has occurred to me in looking over the tables presented in the auditor's report and in the figures which accompany the report of this committee gentlemen will discover in looking over the list of votes on the new State proposition that has been furnished by the secretary of the commonwealth that the counties of Calhoun, Fayette, Logan, Nicholas, Wyoming and Webster have not voted in reference to these matters, or at least there is no return of their vote. Well, now, sir, these counties that have made no return, have taken no action in reference either to the election of delegates or the vote on this new State proposition, are supposed to be identified in feeling and interest with the secession movement —or at least the sentiment of the people is against the establishment of this new State. That seems to have been the idea conveyed in the discussions here on this question and I suppose it to be the correct one. Now in these counties not represented, we have a population of some 22,000 persons. Now, sir, in this district over which we extended our boundary, and which it was pretty generally conceded, but had not a majority at least there was a very strong element of an unsound character, opposed both to the new State and to the general government—I mean the counties of McDowell, Pocahontas, Greenbrier, Monroe, and Mercer which have a population of 31,000. Now we propose to add Jefferson, Morgan, Hampshire, Hardy, Frederick and Pendleton with a population of 65,000. I am speaking of the white population exclusively. Now, sir, I suppose there is not a doubt entertained by any member of this Convention that there is a large proportion if not a majority of the people in all these counties who are hostile to this new State and that have neither feeling nor sympathy with the objects of this Convention or the establishment of this new State. We have here a population of 118,000 in the counties which I have mentioned which were not included in the thirty-nine but which we propose to take in now. If I understand the character of the amendment offered by the gentleman from Doddridge, if it is carried it will give the persons in these additional counties through which the road passes the right to vote with these others which I have mentioned on the Constitution which is to be submitted to them by this

Convention. Now, sir, that makes it a question of policy, of expediency, leaving the justice or right of the question entirely out of the debate. Would it be expedient to introduce an unsound element bearing so large a proportion to the Union element and new State element within this new State as that? Would it not endanger the passage of this Constitution? Now, sir, the fact was adverted to, and I suppose it will not be denied by any one, that no matter how good a constitution you may make, how much caution or discretion or wisdom may be exercised by this Convention in making a constitution, it is not to be supposed we can get any constitution that will command the entire vote of the people within the limits of this new State—not within the limits of the thirty-nine counties, much less within the limits which have already been taken and which we propose to take in.

Now, sir, in this district which we propose to take in now, and in the district of Pocahontas, etc., which we took in the other day, and in the other counties where no vote appears to have been taken if there was a vote at all, that vote and the polls at which it is held must be entirely and absolutely in the control of persons, or nearly so, who are opposed to this whole movement. I do not believe myself that the secessionists within the limits of these counties or within the original thirty-nine, intend always to maintain their position of not voting. If they discover that they can get any considerable element from the loyal or Union portion of our citizens to vote against the Constitution which we adopt I think it highly probable large numbers of them will turn in and vote with them; and sir, if they should do it, and it is a strong probability in my mind, they may defeat the very Constitution which we make here. Now, sir, look at the difference between the population. We have only something like 172,000 in the thirty-nine counties. You must take from that number the 22,000 in the counties not represented here.

MR. LAMB. Two hundred and seventy-two thousand in the thirty-nine counties.

MR. STEVENSON of Wood. Yes, sir; that is correct, I believe. But in taking this 22,000 from it—which you must in making this argument you only make 250,000, in round numbers. So that you have 118,000 against that in counties in which the polls are almost certain to be under the control of men opposed to this whole movement and opposed to the Constitution. Take the number of votes that may be cast then and the number that may be manufactured—

for they have wonderful facility for manufacturing votes—add that to the Union vote which may be cast against this Constitution—I hope it will be small—and I ask if it will not endanger the whole movement. Now that is a very practical question; and these figures strike me with much force. I think we cannot accomplish the purpose of acquiring these counties without the adoption of the principle incorporated in this amendment which might jeopardize the whole movement. I am just as anxious to include the Baltimore and Ohio Railroad as any man in this Convention can be; and yet I would not be willing to run even the risk of sacrificing this whole movement after what we have done for the sake of getting either these counties or that part of the railroad which runs through them.

MR. HALL of Marion. I am at a loss to comprehend how the gentleman from Wood contemplates that it is possible we can include these counties by leaving it to the vote of the people if there is an element there that is in danger of swallowing up all the rest of the Union element in the thirty-nine counties. I say if they have the power to do with us as they may see fit; and they are inclined to turn upon us in this movement how can we expect to include them by their voluntary vote? I have not followed any of the minutia of the figuring and calculation of the gentleman from Wood because I maintain it is upon a basis that is not and will not be found to be true—practically, I mean. But if it were, I for one would not be willing to shape my course of action to avoid the evil or difficulty that he says we will necessarily encounter by the votes that may be cast by those opposed to us in every matter, the secessionists. I stated on this floor once before that we represent the loyal element, and I believe there is no contradiction of that position. If we believe the disloyal part of those within the proposed boundaries ought not to oppose us because they are disloyal—because they wish to be part and parcel of the Southern Confederacy—that they will combine with those who would be dissatisfied with the Constitution; and by that means create a power by which we would be overthrown—I say if we will quietly submit to anything of that sort we deserve to be overpowered. I want to know who have a right to vote and on what terms and conditions they may vote. We have this question up about what should disqualify a man from voting. I trust that in revolutionary times that we are not to stand still with our hands tied with full liberty for those we know to be our enemies in every effort. And I should look in that direction for protection against a combination of those in rebellion against the country, who would turn upon us and upon every project of the loyal citizens. Now for one I beg to say this, that the premises taken by the gentleman from Wood that we are to count all these counties that have not returned a vote here as unfriendly to us are not true practically. While it may be a fact there now that there may be no considerable portion of the people in those counties that are ready to vote for this movement at present let me tell you what will necessarily be the effect. Whenever the people throughout this country find that it is a fixed fact that we are to have a West Virginia and find another thing which will very soon be demonstrated, I trust and believe, that we are not to have a Southern Confederacy—I say then in lieu of finding these men rising up and combining to overthrow or thwart or retard our plans and purposes, you will find them denying that they ever opposed us; and you will find them coming right up to the work and voting. I have no idea there is going to be any voting to any considerable extent in opposition to this Constitution by secessionists. There would be if they could see an advance power that would make them believe it was possible for them to establish a Southern Confederacy and extend the jurisdiction of such a power over this country. Now I ask how many sane men can be found who will even harbor a hope that if there were to be a Southern Confederacy we would be any part of it? I know you will find persons to maintain it, not because they believe it, but out of a feeling of spitefulness growing out of disappointment. I don't believe it. I don't believe that a man tells me the truth when he professes to believe it if he is a man of sense. Well now, if that be so we are not going to have votes cast against the Constitution in this country. Men are not inclined to pursue a thing that they must see at once impracticable and where the support of it can do no good but must inevitably do them an injury. Well, there is another thing about it. Why have we no vote from these counties? Why is it we have had the number of secessionists we have in all these counties. I ask you where, by whom and how was this element of secession sown broadcast all over this country? Well, in this manner. The places, the offices, the funds, every element and power of the government, have been thrown into certain channels and distributed to hired agents all over the country, who have for their pay inculcated these sentiments and who have hoped to be paid still further if they were able to work out and return to the government a good account of their labors for which they were hired. You will find every office, every position, I do not care how low, they have endeavored to make respectable by attaching to it pay, and you have hired persons all over this country; and all the whole United States, the Government has had them employed to sow these seeds of poison; and by their plausibilities they have led along a class of persons that have been but too confiding and inclined to look to others to lead, and have confided in their integrity. Because an honest man is very likely to believe everybody else is honest. They have followed these men until they have been led into the matter and this thing has been brought upon them in a moment of excitement and their prejudices have been appealed to. What is the condition now? These hirelings of the government have gone down to see Mr. Davis and others. You are rid of them; and, my word for it, you are rid of them for all time. Now I take it the same causes produce the same or like effects everywhere, and I judge of this thing by what I see and know in the vicinity where I live. Can these men who have been misled be influenced longer or again by these same persons? No, sir; those very persons who would have followed those leaders if it cost them their lives, would now if they should come back shoot them down like dogs. And what is the fact? These people will not vote—did not vote to any considerable extent—and why? They say we have suffered ourselves to be led along; we have voted wrong once, and we want to think of this matter deliberately, fully and calmly. We want to know just what we are doing before we do anything again. They are absolutely undecided. Thus it is a great many votes were not given. But because of this thing now we are to conclude they are lying back ready to rise against us. It is not so. Well, now here, again, I believe it was the gentleman from Wood, or perhaps my friend from Hancock or both, who argued that if you take in these counties, Frederick, Hampshire and these railroad counties, as they are termed, they will be an element that will vote against your Constitution. Suppose they did; and then supposed there is a possibility that the votes of the people of the thirty-nine or forty-four counties may be so nearly equal that it may give the balance of power to these other counties, and they may defeat our Constitution. Well, suppose they do? What is the effect? It does not destroy the State; but it delays the matter I confess and puts us to the trouble of going to work and making a constitution that would be acceptable. I would not like to place ourselves in that predicament. But that would be the effect of it. You are either to take in or leave out these counties. If you take them in we are told the people there may have the balance of power and vote down your Constitution. If you don't take them in you call upon my people, you call upon all this region of country out here to vote against it. Why? Because you are placing us in the position to use the figure in my mind of being wedged between the devil and the deep sea, and we cannot get out. Now would not that be the position? Would we not be bound and constrained to vote against it? Why? Because you are cutting us off from Maryland; you are destroying this great artery that contributes more than any other to our prosperity and the very means by which our industrial interests and resources are made valuable to us; and we are constrained to vote against it. And by excluding those counties you kill it within the thirty-nine counties, and have no need to go outside for an element to destroy it. My colleague said the other day his people sent him here to make a constitution for the thirty-nine counties. My people did not send me here to do that. I take it upon myself to say what I know that in Marion they would have voted this thing down but for the belief and assurance that it would be part and parcel of the duty of this Convention to change those boundaries. I tell you take the boundary of the thirty-nine and Marion will not vote for it. She is not to be put up air-tight in a jug and sealed up. She wants to work and have an opportunity to do something. It is known I opposed that boundary in the other convention. I came here expressly, sent for that purpose to aid those opposed to the boundary, and I did aid it to the extent I could, but I accomplished nothing. That thing was known to my people. My people endorsed me by sending me back by a vote that was nearly unanimous—scarcely one hundred less than the whole cast on the division of the state. I take it therefore they have said to me that my position heretofore was right, to oppose this boundary as proposed by the June convention. I said to them I am opposed to that boundary, and that convention ought to and would change it. And they said to me by their votes, go back and do that thing. Therefore I say Marion county did not send me here to make a constitution for the 39 counties only. Now I take it that is the fact elsewhere throughout the country. So far as the expression of the people as to the right and propriety of going into this question of boundary is concerned, I state this much in refutation of positions that have been taken as to our power. And while I would be disposed like the gentleman from Wood, to pass over this thing as a settled question, yet because I find and believe it will have an influence on the minds of members who believe they are restricted in their action by the action of the June convention I wish to impress and insist on one or two points that I believe are conclusive arguments against that position. That is this. It was very well argued by the gentleman from Lewis that in order to know what our powers are, their scope and extent, what we may do and ought not to do, we must enquire from whence we derive that authority. He very justly and properly said we did not derive that from the June convention. That is evident. Then his next position was that we derived it from the people of the forty-one counties. Well now, is that a fact? Now, I beg that members will remember the argument of the gentleman from Wood. He tells us how we are acting for a district without reference to county lines. It is a fact. I ask you this, if we are to be trammeled by county lines how can you act with any propriety in any case of necessity like this? Why, sir, that is the very germ of secessionism. It is to talk about the county rights. We have then to talk about town rights and individual rights. It runs to that point. We draw a line here and we describe it by county lines for convenience sake. And thus it was that in the former convention I felt there was eminent propriety in drawing our lines to the extreme point and that the vote of that whole district should determine the question whether we would or would not have a new State. Now we are proposing here to extend these lines, beyond the representation on this floor; and the gentleman from Hancock says it is utterly impossible at least in the ordinary course of events and we need not expect that these people in Frederick can possibly vote freely upon this question at the time proposed. Well now, I think that is possible; and therefore I am in favor of the amendment. I can tell you how it may be. I trust the rebel forces will be driven beyond that point; but there is this thing to be considered. When that is done, it will take some little time before you can get that people to act on a thing of that sort. And they are necessary. And I think while my friend from Lewis says under the authority of the *salus populi* he is in favor of taking these railroad counties and none others. I maintain under that rule it is necessary to take in everyone of these counties embraced in this section. They are so connected with us that if we take part we must take all. I think I am right in this; and if I am not the gentleman from Hampshire will correct me. The representative from Hampshire says he does not want to come in unless his people have an opportunity to speak on this question again. I understood him to say they did not want to come in here as an isolated part. They wanted the adjoining counties with whom they are identified in every interest; that they must necessarily have those other counties taken if they are taken into this boundary. That I think was the statement, and that I think is very reasonable and right.

MR. CARSKADON. We would rather our county had a chance to vote on it.

MR. HALL of Marion. And so would I. I would prefer that there should be no single man but what would have the right to vote; but I would not sacrifice the interests of the masses for the sake of the few. And if there is any doubt about having an opportunity for a fair expression of opinion there then I would look to the interests of all and act under the *salus populi;* and take them *nolens volens.* It is our duty and right. We know we do no detriment to that people. Their interests are with us and whenever they are relieved from the oppression and power under which they are now groaning, they will be with us. Their interests and inclinations are with us, and every consideration will lead them with us. And they will be bound when ever they can act, to vote for this very thing because if they do not that road is necessarily destroyed. They would be a mere outskirt of another State that would deal to them unfriendly legislation. In another way they would be driven to this thing. Necessity would drive them to it. I objected yesterday to the presumption that they were not represented here because they were not inclined to be; and I am not making the declaration that they would be represented if they could and would be in favor of this thing; but when we look at the necessity, I ask what must be the position of that people? That is the only way we can judge and the way we must come at this thing. And I therefore must urge we consider this fact. We do not derive the right from a particular county. It is only a method by which we determine upon a regular representation. We do not come here with county rights, but as a section; and we are governed by these considerations, and not trammeled by county lines. And then when we remember this further consideration that, as suggested by the gentleman from Wood, all we can do amounts only to what? Only to a recommendation—a suggestion—to the legislature, which has a right to act independently of and in spite of anything we can do as a convention, or that the June convention or any other, has done or may do. No, sir; they have the power, they have the right, to act. We can do nothing that amounts to anything more than a recommendation or suggestion. And it may be asked, then why are you spending so much time in the Convention? But it does amount to something, because the members of the legislature will consider that we are a body more immediately from the people and will therefore reflect more certainly the sentiments of the people than they do; and will feel themselves almost bound to be governed by what this Convention will do. Therefore there is a propriety in our consuming the time and doing what ought to be done. But whatever doubts gentlemen may have with reference to our right, when they remember it only amounts to a recommendation, and that the legislature is a legislature of the whole state, Richmond included, and that they have all power in the premises, and that they are the power to whom is delegated authority to act irrespective of us—therefore we ought to say what we believe the necessities and interest, require at our hands. And then it goes to the legislature; and when they act on that thing, if there is any change of the condition of affairs that ought to influence them, they will see it; they will act upon it and give it such weight as it should have, and they will do just what they think right to do all the time. Then they will act under the circumstances and do what they believe the necessities of these people require.

But I must insist, as stated by the gentleman from Wood county that we are not sent here for a specific and prescribed purpose—that there never was a body of men who had the right to limit us, and that any pretense to do so was arrogating to themselves powers they did not possess and has no force or validity—as we have expressed ourselves by setting aside this, that or the other. Because, if that is the truth then you are bound to close the Convention and submit—whatever you have got that looks like a Convention—you must submit to the people before you are going to adjourn. Now, if you are going to obey them, do so. You cannot do it. You see a necessity they did not foresee. Well now, they did not and could not foresee and tell what would be the condition of affairs now. And thus it is there is eminent propriety in our acting in this matter. And when we remember that it all means merely a recommendation, why we urge upon the consideration of the power that has the whole control of this thing, we have a right to include them absolutely as part of this section and that we ought to do it.

I am in favor of the amendment because if you allow the matter to be submitted to a vote there, with all the contingencies, it is only trammeling the legislature in its action with reference to the matter. And if we include them it is perfectly competent, if not the reason may be apparent when they act for them to exclude them. If there are any facts, any circumstances, they may have that we have not, it will be for them to act on them and exclude them afterwards. But I do insist there is an impropriety in fixing an election to be held if we believe the circumstances will be such they cannot hold an election. I think there are more chances there in most of those counties than in the district with reference to which we took this same action a few days ago. But still there are chances that we may not have their action in time, and therefore I am for taking them in absolutely. It does not amount to coercion, really. We have no power to take them in; but that does not make the matter obligatory on them until the legislature has acted. But if the legislature sees any good reason why they would change it as they have a right to do. I trust we will not feel ourselves tied up, but will act upon this matter looking to the great good of the people with respect to their absolute necessity and that we will not be so tender about a supposed objection over there. It will be time enough to look to that when we know it. And we will do what we conceive ought to be done; and when we do that, we do really what our people sent us here to do.

MR. WILLEY. Mr. President, I think we are ready to take the vote, sir, and I do not rise to make a speech again. It is interesting to hear members repeat the arguments which we have repeated a half dozen times; but, then, I do not know, sir, that it will amount to anything in the result of our deliberations. As I remarked yesterday I am inclined to concede the right, and was willing to proceed on the principle as established by the Convention. This Convention has established the right to include them without submitting to the vote, as I think arbitrarily. But I do not rise to repeat the argument which I made in opposition to this principle the other day. Perhaps gentlemen may have accomplished something by reiterating the same argument. Continued dropping wears the stone after while it is said. I confess, sir, however, that I am only the more strongly and fixedly convinced that if this amendment passes it will violate a fundamental principle more important and more valuable than any advantage we can derive from adding these counties to us—although I am willing to admit the force of the arguments of gentlemen in that respect in their full latitude and extent.

I rise simply, sir, to say this much that I may be placed right on the record, not to repeat the argument: there is one of the arguments of the gentleman from Marion which is new, and therefore I choose to attempt to answer it. That the action of this body is recommendatory—that is not new; but moreover, that it accomplishes nothing. Why, sir, we have been spending a great deal of time then to accomplish nothing. Sir, it is designed to accomplish a violation of the very fundamental principle to which I alluded. It is true we can only recommend, but our recommendation is designed to have some influence; and supposing that the legislature should coincide with the gentleman from Marion in his views and assent to a division of the state including these counties under consideration, and Congress should also give its assent, and these counties should thus be included what would be the result as to them? It is true, I suppose, that the Constitution which we prepare will be submitted to them for their adoption or rejection; but gentleman say it is not at all probable many of them, that these counties can vote upon the Constitution. It is not at all probable. It is alleged that they will be in a condition which will enable them to express their opinion for or against the Constitution which we may ordain, and therefore they argue we had better include them at once. Why, sir, we are placing these counties in a very awkward position. We are adding to their misfortunes, multiplying the grievances you wish to impose on them. We are taking their destinies entirely into our own hands. According to that argument they may not have even an opportunity to vote on the Constitution which they had no voice in framing. That is to say we may absolutely take it upon ourselves to frame a Constitution without consulting them, and practically to impose it on them without them having an opportunity to give their assent or dissent. It is this grievance to which I allude, and the grand fundamental principle which prevents me from voting for the amendment. Although they may have an opportunity of voting on the Constitution, as I hope they will have if included, they have no opportunity of being heard here on this floor in the formation and ordination of the fundamental law under which they are to live. I shall not repeat the arguments. As between the amendment and the original proposition, the original proposition does not meet my approbation, but the amendment makes it worse; and therefore I shall have to go against the amendment, reserving my judgment for the original proposition if the amendment is defeated. I shall perhaps offer an amendment to the original proposition if this amendment should be defeated.

MR. VAN WINKLE. Does the gentleman intend to offer the amendment he indicated yesterday?

MR. WILLEY. I do, sir.

MR. VAN WINKLE. It might be properly offered, I think as a substitute for the present one. While I have no doubt of the right, as I have two or three times stated, of this Convention to adopt this amendment and put things on the basis where this would leave them, I still think that possibly it might be injudicious. It is very possible, indeed, that the people living in those counties, remote from us, not having such immediate connection with us as those in the other boundaries, being populous, wealthy and intelligent counties, might infer if they were not consulted about this matter it was something in derogation of them, and upon that premise they might be induced to vote against their connection with us, while otherwise they would choose to come in. I make this suggestion to the friends of the present movement, because, it has been weighing on my mind ever since it was proposed in the Convention; and I have that kind of doubt about the propriety of it, arising not from the mere question of right, but arising from its practical operation, that it might offend those whom we should desire to conciliate. They might think they were not treated as well as they ought to be. The amendment of the gentleman from Monongalia, with some modification would seem to be a judicious one; if this is voted down, and I should like to have heard a comparison between the two—I think the amendment of the gentleman from Monongalia—the one that has been talked of—if it included certain counties as a district which should be dependent on one another, and if a majority of the district were favorable, and then left the operation with the other counties, in the way he had drawn it up, it would accomplish the views of every member who wishes to see these counties connected with us, and they would receive it as more like a courtesy than voting them in without consulting them.

MR. WILLEY. I had understood the gentleman as desiring to offer some modification to my proposition; and I supposed if I offered it as an amendment to the amendment it would exhaust the privilege; I therefore thought I had better let the vote be taken on this clause by the Convention first.

MR. BROWN of Kanawha. I must say, sir, we have come here to perform the high duty of forming a state; and in doing that the high consideration should be that course which would redound to the prosperity of that state. It seems to me that when we have considered that which really is necessary and proper, which constitutes the great object of our assemblage, that if we should find ourselves trammeled or annoyed by the ordinance that assembles us, as wise men, assembled to effectuate a broad and great object, we should free ourselves from that trammel. The gentleman from Lewis found himself very much troubled. While he recognized the importance—the almost necessity—of taking the step that was proposed, he still bowed in deference without the means of accomplishment. And he seemed to range himself on the side of the ordinance against the right, while I find myself compelled to range myself on the side of the right, and defend the rights of the people, whether the ordinance should be in the way or not. The view I have taken of this subject heretofore I have expressed to this house—that I could feel the ordinance was no trammel, was never intended to be; and that we do not here derive our power from that ordinance. I, like the gentleman, hold my authority to act here is derived immediately from the people; and that the authority is delegated to accomplish the high end of the formation of a constitution and state—not to defeat that very object by following the letter of an instruction that has shown itself to be utterly impossible to attain the end; that we have to violate it at every step or go home without accomplishing that for which we were sent.

Now, sir, it seems to me that some of these counties are so essential, that there are such high considerations and reasons for their inclusion as renders it necessary that this Convention should take definite action. The only difficulty in my mind has been the inclusion of some others that do not seem to stand in that category. The county of Frederick or Pendleton does not stand upon the high ground or have the same claims upon us that the other counties along the railroad do. But this Convention has determined in its wisdom and power that Pendleton shall not be stricken out; therefore the question results whether we shall abandon the railroad and all its benefits to the State or abandon the county of Pendleton. The question that troubles the gentleman last on the floor so much is that we are here proposing to take action on this question without consulting the wishes of these people. I confess this does not trouble me. We have asked already in the case of these other counties, and acted as I understand on this high policy of state necessity—the security and safety and prosperity of not only those people but all the rest of the people in the State. We have acted on the principle that while we cannot have extended to them the privilege and opportunity of expressing their sentiments and being with us while circumstances are such as in all human probability will entirely prevent them from having such an opportunity if extended; and therefore we have come up to the high consideration, it seems to me, of determining the question as men and not trifling with it as children. But if the same reasons apply to the counties in this category, I do not see how we should shrink from the same action, that is, to extend to the people who will have no opportunity to vote the same benefits as to ourselves, which they can have no hand in at the time, and this Convention has decided that they will not permit the legislature to extend the time as circumstances may determine and the necessities may develope—that it shall take place on the day prescribed. I say, then, if when that time arrives these contingencies are such that you will take no vote, then we fail to get them and settle the case definitely. You not only endanger the success of the whole concern by dallying to please these counties that may fail or may not fail as the case may be. I go upon the ground of necessity and interests of these people as well as our own, but that these people are like ourselves actuated by their own interests, and that they have shown heretofore an allegiance as clear and distinct as that of any other people. That it cannot be supposed if they vote at all they would seek to vote themselves with us unless you do violence to every instinct of human nature by supposing they will vote against their own interests. Hence, what are your hopes of securing the efficiency of that road. It is that every interest that induced them to vote for the Union when their brethren were going into the Confederacy would influence them to vote to come into the new State. Why was it the Union men of Augusta and Staunton were more emphatically Union than any people in the State of Virginia, and where there was as strong and deeply imbedded sentiment in behalf of the Union as in any county in the State; and by their election in February they showed, and by their delegates in the Convention, and by all the past history of the county they have shown it. But with the Covington and Ohio Railroad passing right through them and terminating in Richmond, with the assurance of their delegates that the Confederacy was a fixed fact and they would be compelled to be a part of it with all their interests connected with the Confederacy, we find them abandoning their love of the Union and yielding at last to the seductive influences brought round them. They took the railroad to the Southern Confederacy; and for the very same reason, actuated by the very same motives, of self interest, influenced by the same reasons which impel men to follow their interests you find the people along the Baltimore and Ohio Railroad, knowing that whatever fate may befall the Confederacy their destinies were inseparably united with Baltimore, and that was in the Union; and so there they are found all for the Union. It is the interests of these people that have induced these differences of opinion. It is the main reason. But I say these very interests now operate to induce them as well as us to stick together and stand by the Union. I can see no reason why they would vote against still continuing the securities and guaranties of that road which secures their interests. That is the very object we are now proposing in this action. We are two peoples in the State of Virginia. One half of the state are calling us traitors; and we, the other half, are calling them rebels. We are divided in sentiment, in interest; we are divided in feeling, and divided now, sir, in the directions in which we look for future security and prosperity. These people live in our part; their interests are with us; their lines of communication run with us; and the very reason we are proposing to take them is, because our interests are dependent, in a very great degree, on their safety and security. Everything, therefore, almost, induces them, whenever an opportunity to speak is afforded them to speak on our side. And the question is shall we secure them that opportunity by now defining the boundaries, at once fixing and prescribing them as we have done in the case of these other counties, knowing what they will do whenever they get an opportunity, or permit the want of an opportunity to defeat the whole concern by extending them the privilege they would never have the opportunity of exercising. These are the motives that induce me to vote for this amendment. And the only difficulty I find in my mind in the subject at all is the addition of other counties that were not in the precise necessity in my mind that this Convention has determined must go along with them.

MR. CARSKADON. I desire to be fully understood in the vote which I intend to give on this question; and I wish the Convention to understand that I am decidely in favor of the county of Hampshire coming in, as I stated the other day, with the adjoining counties. And I am in favor of her and the rest of the counties named in section 5 (now I believe 7). I am in favor of their having an opportunity to vote or give some intimation of their desire to come in. If they are to be included arbitrarily, I think it wise and proper that this Convention give them a chance first to vote;

and if that action is to be had, let it be had or taken by the legislature. They will know exactly the position in which the counties stand; and if we make some provision by which if the obstacles are removed they may vote we will not injure the cause in the least, because the legislature will then have the whole thing before them and they can fix the boundary as seems best. Therefore I think it, as the gentleman from Wood has said, wise and judicious to give them an opportunity, to extend this courtesy to them, that they may if the circumstances permit, vote upon the question. These being my views, as I before stated, I consider it a violation of a fundamental principle, as the gentleman from Monongalia has said, to arbitrarily include them, without a chance to vote, on the organic law. Therefore, I am opposed to taking them in arbitrarily in violation of that principle; and I would be compelled to vote against the amendment on that account at any rate. But another and stronger reason is, because I think we have not exhausted the means which are in our power to give these people a chance to vote. It is time enough as I before stated to let the legislature have the ultimatum of including them arbitrarily if they must. Therefore I feel constrained to vote against the amendment of the gentleman from Doddridge.

MR. LAMB. Mr. President, I have no doubt that the Convention is anxious to decide the question and I shall detain them but a moment. I may remark that I trust the Convention, notwithstanding the vote which was taken yesterday will be disposed to adopt any feasible measure for the purposes of insuring to the people of these counties a vote on this subject. We may very properly have disapproved of the amendment which was proposed yesterday; but before we adjourn I do trust that the right of these people to vote on this question will not be confined to a particular day, and that the whole measure of including these counties in the new State will not be defeated if upon that particular day it is impracticable to exercise this right. With this view, that the Convention before it adjourns,—before in finally adjourns—will adopt such measures as will insure to the people of this district the right of deciding this question for themselves, I must say that I cannot vote for the amendment of the gentleman from Doddridge. It is well known that upon the question of power, I have entertained no difficulty; but I do think without attempting to argue the question, that to say to these people "You shall come in," is not the most judicious mode of accomplishing our object of getting them in. The considerations which were urged by the gentleman from Wood, have great influence with me on this subject. I believe we can get them in, we can have them part of us, with their consent. We can have them included within our boundaries within a reasonable time with their consent, if proper measures are adopted for that purpose; and though I have no doubt on the question of power, for our whole action is but recommendatory, our whole action is to be submitted to the people of the State for their ratification. I would have that consent where it is practicable to obtain it within a reasonable time, and I do think that by saying to these people, "You shall come in, whether you consent or not" you are degrading really the whole measure.

Without detaining the Convention, I will beg leave to make a further remark in explanation of this ordinance so often referred to. That ordinance provided that this Convention might include the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, and such counties as lie contiguous to them, if the counties to be added by a majority of the votes given, should declare their wish to form part of the proposed state. It is true that convention required the vote to be taken on a particular day, but that particular day is not the substance, not the substantial part, of this provision. The Convention did intend that these counties should have an opportunity of deciding that question for themselves—for all these seven counties are strictly included in the language here used. They did intend these and with them those contiguous should become part and parcel of the new State if they were willing to do so. It is but carrying out in substance the action of that convention. It is not violating it substantially; for certainly that convention did not intend that the particular day on which the vote should be given should be entirely conclusive and final in regard to so important a matter. That Convention acted, as I have before stated, undoubtedly on the supposition that this vote should be taken on the 4th Thursday of October; but they were mistaken in it, and the question comes before us under circumstances which they did not anticipate and provide for.

MR. HAYMOND. I desire to say to you, sir, and this Convention that I am opposed to the motion of the gentleman from Doddridge. I never can vote for it. And in the next place I desire to say to my distinguished friend from Monongalia if he offers his amendment I shall vote for it with the greatest pleasure. Sir, I am not afraid of this Baltimore and Ohio Railroad being cut off.

I shall vote for the amendment, I say, of the gentleman from Monongalia. And I beg to say whilst I am up that my colleague says he is representing the people of Marion—that they want him to hunt up territory. Sirs, I know something of that people. I tell my colleague, sirs, the very last man I saw was a distinguished friend and he told me, says he, "I know how you stand on these principles, and I want you to stand by them and not jeopardize the State." I said to him, sirs, I was coming down here for a new state; and by the gods I would stand by it (Merriment). Sirs, the gentleman says that a majority of the people of Marion are for extending the territory. I have never seen a single man in the county of Marion except my colleague who wants the territory extended. I have seen about thirty since I have been here, and they have all told me to stand by the boundary. I told them I intended to do it.

MR. STUART of Doddridge. I call for the yeas and nays.

The yeas and nays were ordered, on the motion made yesterday by Mr. Stuart of Doddridge to amend the third resolution by striking out thereof all after "State" in the twenty-second line, and being taken resulted:

YEAS—Messrs. Hall of Mason (President), Brown of Kanawha, Chapman, Dolly, Hall of Marion, Ruffner, Sheets, Soper, Stuart of Doddridge—9.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Caldwell, Carskadon, Cassaday, Dering, Dille, Hansley, Haymond, Harrison, Hubbs, Hervey, Hagar, Irvine, Lamb, Lauck, Montague, Mahon, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Taylor, Trainer, Van Winkle, Willey, Walker, Warder, Wilson—37.

So the amendment was rejected.

MR. WILLEY. I do not know whether I shall be able to meet with the Convention this evening. I therefore avail myself of this opportunity to offer the amendments to the resolution indicated a while ago.

MR. VAN WINKLE. Will the gentleman be kind enough, as he is going to leave us, to occupy one or two minutes in explaining the spirit and force of them.

MR. WILLEY. I will read them. I will state before doing so my object is to begin with the territory that is contiguous to us and take it in as it may come in so as to keep each part voting in contiguous and adjacent until we run against a county that sees proper to vote itself out. That is take each county as follows:

"That the counties of Pendleton, Hardy and Hampshire ought to be included in the proposed State of West Virginia, *provided,* a majority of the votes cast in the said county of Pendleton, and also in the said county of Hardy, and also in the said county of Hampshire, at elections to be held therein, on the day of , 1862, is in favor of the adoption of the Constitution to be submitted by this Convention.

RESOLVED, That the county of Morgan, ought to be included in the said State *provided* a majority of the votes cast therein, on the day aforesaid, is in favor of the adoption of said Constitution, and *provided,* further, that the said counties of Pendleton, Hardy and Hampshire shall be included therein, as aforesaid."

You will perceive if these counties vote themselves in and the county of Morgan also votes to come, she may come in; but if the other counties of Hardy, Pendleton and Hampshire voted not to come in, then the county of Morgan could not come in. I wish to take territory, as they say, "Ranging"—as it comes.

Then I have a third resolution as follows:

"RESOLVED, That the county of Berkeley ought to be included in the said State, *provided* a majority of the votes cast therein on the day aforesaid, is in favor of said Constitution; and *provided,* further, that the said counties of Pendleton, Hardy, Hampshire, and Morgan shall be included as aforesaid."

I have for resolution four:

"RESOLVED, That the county of Jefferson ought to be included in the said State, *provided* a majority of the votes cast therein on the day aforesaid, is in favor of the adoption of said Constitution; and *provided,* further, that the counties of Pendleton, Hardy, Hampshire, Morgan and Berkeley shall be included in said State as aforesaid."

Then I have the last resolution:

"RESOLVED, That the county of Frederick ought to be included in the said State, *provided,* a majority of the votes cast therein on the day aforesaid, is in favor of the adoption of said Constitution, and *provided,* further, that the counties of Pendleton, Hardy, Hampshire, Morgan and Berkeley, shall be included in the said State in manner and form aforesaid."

I do not care if Jefferson does not come in because Frederick would make proper and contiguous territory although Jefferson might not come in. I have not time to explain the resolution further. They explain themselves however.

(Mr. Willey's motion, as recorded by the Secretary, though not made directly, was to strike out all the third resolution of the report of the Committee on Boundary after *"Resolved"* and to insert the five resolutions read by him.)

The hour of twelve o'clock, M., having arrived, the Convention took a recess.

THREE O'CLOCK, P. M.

The Convention reassembled.

MR. BATTELLE. Mr. President, I have a resolution which I wish to offer.

It was reported by the Secretary as follows:

"RESOLVED, That the debate shall cease and the vote be taken, on the report of the Committee on Boundary, this evening at 4:30 o'clock, provided that nothing herein shall be construed to prevent members from offering amendments to the report."

MR. BATTELLE. I do not wish to discuss the resolution, and I certainly do not wish to abridge debate improperly. I would remark, however, what is known to everybody, that we have been nearly two weeks on this one chapter and unless we come to a close at some time there is no prospect of getting through our business in reasonable season. There must of course be no limit to the offering of resolutions—supposing that what may yet be unsaid can be so adjusted as to come within the time suggested.

MR. STUART of Doddridge. I would like to hear the resolution read again; I could not hear it.

The Secretary again read the resolution.

MR. STUART of Doddridge. I move to amend that the debate shall cease on the division of the question.

MR. BATTELLE. If I understand it, we are discussing the report of the Committee on Boundaries.

MR. STUART of Doddridge. Well, let the debate cease on that report. I would like to hear the resolution read again.

The Secretary again reported the resolution.

MR. STUART of Doddridge. Well, that may meet the views of gentlemen, as it does not limit the right to offer an amendment. I would like to amend further, Mr. President, that the debate shall be confined to five minutes; because parties offering amendments will want a minute or two to explain, and a party a minute or two to reply. I am for curtailing debate, and have no desire to extend it.

MR. DILLE. I am decidedly in favor of the resolution as it now stands, although I am free to say that I have been delighted and instructed by the numerous speeches that have already been made upon this subject; but it seems to me that this Convention is occupying too much time upon this subject, and I am decidedly in favor of the resolution as it now stands.

MR. STUART of Doddridge. My amendment is that the debate shall be confined to five minutes on the part of the member who offers an amendment and five minutes to any member who chooses to reply to the amendment—because I would not like to vote upon a question without any explanation.

MR. PARKER. Mr. President, but I understand this precludes all debate on the questions entirely—or do I understand it?

THE PRESIDENT. If I understand it correctly, it will conclude all debate on the boundary resolution at 4½ o'clock.

MR. PARKER. We have been accustomed to take them up separately. I had thought of offering an amendment to take in that part of McDowell within our boundaries which lies northwest of Sandy River. It will make a better boundary than to go by the county of Wyoming.

MR. VAN WINKLE. That is not in order at present.

THE PRESIDENT. The motion of the gentleman from Cabell would not be in order at present.

MR. HERVEY. It is well known, sir, that I have not occupied a great deal of time on this floor; but it does seem to me when there is a lengthy and complicated series of propositions coming before this house from the gentleman from Monongalia, to be disposed of, and then the report of the committee to be taken up afterwards, and the fact that we have but an hour and a half to dispose of the two sets of propositions—that cannot be done in that time. It strikes me as very evident that it would be doing injustice to the subject.

MR. HALL of Marion. I have done considerable talking on this question and I admit we have consumed a good deal of time; and I have no disposition to prolong the discussion beyond what may be absolutely necessary; but if there is anything of importance in the whole matter of our duties here, it is on this very question. And as remarked by the gentleman who has just taken his seat we have a series of resolutions as it were submitted by the gentleman from Monongalia and we have not an hour to act upon this thing; and it is a matter as I conceive of too much importance to cut it off in this style. I think we may profit by considering it well and carefully; and I am opposed to circumscribing or fixing a rule of this sort that may effect materially so important a part of our duties here in this body. I will trust we can trust ourselves.

THE PRESIDENT. I would remind the gentleman from Marion the question is now on the amendment.

MR. HALL of Marion. The question as I understand it is on the amendment of the resolution proposed by the gentleman from Doddridge. I do not apprehend that amendment exactly. The amendment is to be a limit to five minutes debate after half past four, is it?

MR. STUART of Doddridge. The object of my amendment is this: That a person who offers an amendment should have five minutes to explain his amendment, and any person have five minutes to reply to it.

MR. HALL of Marion. That would lead necessarily to the introduction of amendments merely for the sake of debating the other question. I have seen these things done. And it occurs to me really that the resolution will be in the way and either do one of two things: it will either cut us off from a proper consideration of action on this matter—or it will lead to doing indirectly what we do not do directly. If it is the sense of the body as I am satisfied it is; that we ought to close debate as rapidly as possible; but I do not see that any good can result but great evil may from circumscribing our action in this particular.

MR. BATTELLE. Mr. President, if the Convention are disposed to take up an hour or two in discussing the resolution, I had better withdraw it perhaps. I wish to say lest I be misunderstood that I have been as much entertained and I will say instructed and gratified by the debate that has gone before as any gentleman; and

I do not mean either directly or by implication to cast any, even the slightest, reflection on the very able discussions gentlemen have conducted here. But it must be apparent, as I before said, that we have spent, I think I might say, an enormous amount of time in this single question; and if we are not instructed by this time the point is, when are we likely to be? We have been nearly two weeks—

A MEMBER. One week.

MR. BATTELLE. Nearly two weeks. We met two weeks ago last Tuesday; and nearly all the time has been spent on this single debate.

SEVERAL MEMBERS. A week.

MR. BATTELLE. A week, is it? Well, I stand corrected, then on that point. Well, it seems to me a long time; and the resolution, I would say was not offered with a view of cutting off any gentleman who may wish to speak. I am on principle opposed to anything like what may be called a gag rule. It is merely for the purpose of indicating a time at which we will take the vote and with the hope that the discussions before voting will adjust themselves to that time. If it be the pleasure of the Convention, however, to take a different view of the subject, I shall very submissively bow to their will and sit it out as patiently as any of them.

MR. HERVEY. There is another table of eight or ten counties to be taken up not yet before the Convention.

THE PRESIDENT. Do I understand the gentleman as withdrawing his resolution?

MR. BATTELLE. By no means. I said I had better do it, if the discussion on it was continued much longer.

The vote was then taken on the amendment offered by Mr. Stuart of Doddridge, and it was rejected.

MR. STUART of Doddridge. Mr. President, I feel under the necessity of making a statement to this Convention before we vote on that resolution. We have a very complicated amendment now before us, that I have not had time to read. There is another resolution to be offered in regard to this boundary. There are members here now from the counties of Loudoun and Fairfax that insist that they shall be made into a district and have the privilege of voting whether they will come into the State or not;

and this will raise a question here. There is no doubt that those gentlemen, in the other house, representing those counties, want to be here.

MR. BATTELLE. Allow me to make a suggestion. The resolution now before us contemplates simply the report from the committee of which the gentleman from Doddridge is chairman. It contemplates no other aspect of the boundary question, no future contingency that may arise—simply what is contained in your report. I suppose of course, the admission or rejection of delegates from Fairfax cannot enter into this report.

MR. STUART of Doddridge. It comes up as a motion for an amendment to this report. And I may be under the necessity of offering an amendment. It is treating these gentlemen with great neglect, it appears to me. Their rights in this matter ought to be heard, and their reasons. I will be under the necessity, although I want to curtail debate—under the circumstances, I will have to vote against the resolution.

MR. VAN WINKLE. I move to amend the resolution by confining its operation to the third resolution of the report and any amendments thereto. I apprehend that will reconcile it all 'round.

THE PRESIDENT. Will the gentleman from Ohio accept the amendment?

MR. BATTELLE. Yes, sir.

The question was then put and Mr. Battelle's resolution was rejected.

MR. WILLEY. Since we have got off the regular line of business I wish to make a motion. The Committee on the Judiciary have not completed their report. A most difficult and material part of that is arranging the circuits. I will be absent as indicated this morning and move that Mr. Harrison of Harrison, be added to the Committee on the Judiciary.

MR. HALL of Marion. I second the motion.

The question was put and the motion agreed to.

MR. STUART of Doddridge. Mr. President, I would like to have the amendment of the gentleman from Monongalia reported.

The Secretary reported it as follows:

Strike out all after the word "Resolved," and insert—

"That the counties of Pendleton, Hardy and Hampshire ought to be included in the proposed State of West Virginia, *provided,* a majority of the votes cast in the said county of Pendleton, and also in the said county of Hardy, and also in the said county of Hampshire, at elections to be held therein, on the day of 1862, is in favor of the adoption of the Constitution to be submitted by this Convention.

RESOLVED, That the county of Morgan, ought to be included in the said State, *provided,* a majority of the votes cast therein, on the day aforesaid, is in favor of the adoption of said Constitution, and *provided,* further, that the said counties of Pendleton, Hardy and Hampshire shall be included therein as aforesaid.

RESOLVED, That the county of Berkeley ought to be included in the said State, *provided,* a majority of the votes cast therein on the day aforesaid, is in favor of said Constitution; and *provided,* further, that the said counties of Pendleton, Hardy, Hampshire and Morgan shall be included therein as aforesaid.

RESOLVED, That the county of Jefferson ought to be included in the said State, *provided,* a majority of the votes cast therein on the day aforesaid, is in favor of said Constitution; and *provided,* further, that the said counties of Pendleton, Hardy, Hampshire, Morgan and Berkeley shall be included therein as aforesaid.

RESOLVED, That the county of Frederick ought to be included in the said State, *provided,* a majority of the votes cast therein on the day aforesaid, is in favor of the adoption of said Constitution, and *provided,* further, that the counties of Pendleton, Hardy, Hampshire, Morgan and Berkeley, shall be included in the said State in manner and form aforesaid."

MR. STUART of Doddridge. Mr. President, I must be permitted to say that the amendment offered by the gentleman from Monongalia does appear to me to be one of the most unfair amendments that has yet been offered in this body, and the most anti-republican. I had thought that—

THE PRESIDENT. The Chair would suggest to the gentleman from Doddridge that the rules restrict us to deny the right to use unkind language.

MR. STUART of Doddridge. My friend knows that I would not say anything that would be offensive in the least.

MR. WILLEY. I have the best evidence in the world that my friend from Doddridge did not design anything of the kind. And inasmuch as I have to leave will he allow me just a moment to explain what I think and understand to be the operation of the resolution, and then I will give him a fair field and a free fight. I have about ten minutes.

I certainly did not offer it as any unfair, partial or anti-republican proposition. If I could have the pleasure of remaining here to hear the argument of my friend on that subject, I do not think he would be able to show that it was so. My object was, sir, to avoid the infraction of what I conceive would be a fundamental republican principle. We are directly at issue on that point. I have all along, in opposition to my friend contended that we have no power to include peremptorily and arbitrarily any counties outside of the limits, upon the ground, as I have repeatedly alleged, that we ought not to impose on any people a constitution in the formation of which they had not equal representation, a full and fair opportunity of being heard. My resolutions are introduced with a view of avoiding that infraction as far as possible. For instance, I start with the counties of Pendleton and Hardy. I had some hesitation whether I would include the county of Hampshire; but in looking upon the map and consulting what I conceived to be the best interests of the whole project, I thought it was best to include that county also. Well, sir, if they vote in favor of coming in the road is open to take the county next adjoining in the tier of counties which we seem all to desire to include. I acknowledge if they vote to stay out, the matter is at an end, and you can include none. But then I think we have the assurance, Mr. President, that if any of those counties are disposed to come in it will be the counties of Pendleton, Hardy and Hampshire—that in point of fact, practically, we lose nothing by risking the contingency that they may decline to come in, because I believe they are more ready to come in than any of those below. They voting to come in, the way is open for the process which I propose to make our request to the next, the county of Morgan through which this railroad passes for a considerable distance. If Morgan comes in the way is open for Berkeley and Jefferson, and then we have the entire railroad included within the new State. And my impression is that there can be no difficulty on the question whether either of these counties will come in, because I believe if a fair opportunity is afforded, which I hope may be given to them by some arrangement of this Convention in the schedule, or otherwise either at the time indicated in the resolution or at some other time later, in the wisdom of the legislature—I have no doubt when the opportunity is fairly offered to them and they have a free opportunity of expressing their opinions on the subject that all these counties will come in. Well, sir, to make a good territory—to make a good form we ought to have also the county of Frederick. But if it does not want to come in, it does not make any difference about getting the counties which include the railroad, because according to the provisions of the resolution they would have been included. I suppose there is more doubt about Frederick than in respect to any of the other counties. It is the last in the category. All the others may come in although it does not. I believe the others will come in and then we will have included the railroad at any rate.

Now, sir, I have not time to go at large into the reasons why I think this is the better proposition. I said I would speak briefly and hurriedly of the operation of the proposed amendment and I have to leave it in the hands of the Convention. I hope they will consider it kindly and investigate it thoroughly.

MR. STUART of Doddridge. Mr. President, I have not yet changed my opinion that this is the most unfair amendment that has yet been offered and the one that will operate the most partially; and I think it will take a very few words to prove this to this Convention. I will promise my friend from Ohio that I will be very brief. I have no doubt we are all tired of this discussion. Still, sir, the amendment offered by the gentleman from Monongalia impels me to say a few words, occupying the position I do in regard to this movement—not because I like it at all, because I have not a very good use of language, and it is difficult for me to express even what I know or think.

I had during the process of the discussion here come to the conclusion that the gentleman from Monongalia really desired and wanted these railroad counties—Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson, and the other, Frederick. But, sir, I am compelled, looking at this amendment offered by the gentleman to come to the conclusion that he does not want this territory. And I will be compelled to draw that conclusion towards every member of this Convention who votes for this amendment in its present form; and for reasons, sir, that are so apparent that they cannot help but be seen.

The first resolution starts out:

"RESOLVED, That the counties of Pendleton, Hardy, and Hampshire ought to be included in the proposed State of West Virginia, *provided,* a majority of the votes cast in the said county of Pendleton, and also in the said county of Hardy, and also in the said county of Hampshire, at elections to be held therein on the day of , 1862, is in favor of the adoption of the Constitution to be submitted by this Convention."

Now, sirs, take up this map; look at the location of that country—Morgan, Berkeley and Jefferson—you will find a territory there embracing a hundred miles or more. And according to the recommendation of this resolution you say to the little county of Pendleton with some three or perhaps four thousand of a white population, stuck up away off there in the southwest portion of that territory, you have a right with your population of three or four thousand whites to control the entire action of the entire boundary embraced in the resolution—you little county of Pendleton have a right to rise and survey this field and say you are lord of all you survey. If you cast twenty votes in the county of Pendleton against the adoption of this Constitution, although the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson —the entire five or six remaining counties—vote with an overwhelming majority in favor of the Constitution—yet under the provisions of this Constitution you say to the county of Pendleton although you cast but ten votes against it, you defeat the will and pleasure and wish of the entire district. Now, gentlemen, is not that anti-republican? Is not that unfair? Am I borne out in the assertion that this was the most unfair amendment and was really anti-republican, because you place it in the power of some three or four thousand to control the action and influence and conduct and destiny of some 20,000 or 30,000 people—some 40,000—some 50,000? Look at the census of the county of Pendleton. It is one of the remote counties, off to one end of the district, not lying bordering upon Jefferson, Berkeley or Morgan, but up adjoining the county, I believe of Hardy. Now I think that I am not mistaken in the fact that this county has not a population exceeding perhaps 4,000. And this little county, as I remarked, you give the authority to control the destinies, as I remarked, of a population of people of some 50,000. If that is not the correct reading and interpretation and understanding of this resolution, I admit, sir, that I must be mistaken.

"RESOLVED, That the counties of Pendleton, Hardy and Hampshire ought to be included in the proposed State of West Virginia, *provided,* a majority of the votes cast in the said county of Pendleton, and also in the said county of Hardy, and also in the said county of Hampshire"—

And then it goes on and takes up the county of Morgan, which ought to be included.

"—*provided,* a majority of the votes cast therein on the day aforesaid is in favor of the adoption of said Constitution, and *provided,* further, that the said counties of Pendleton, Hardy and Hampshire shall be included therein as aforesaid."

And so it goes on down till you come to Jefferson. Still take the whole connection of the resolutions as offered, and the county of Pendleton can defeat the whole action of this class of counties embraced in this resolution.

I am now in favor of adopting if possible the resolution of the committee as now amended; and that is, to let these counties remain in the district and let the majority of the votes cast there decide the question. If a majority be in favor of the Constitution, and a majority of counties be in favor of it, then, sirs, let them come in. I believe that is the best we can now do. I do hope this body will not vote to adopt this resolution and say to Pendleton—because the secessionists will have nothing in the world to do but to rally the little county of Pendleton and vote against your new Constitution, to defeat the rest. They are about as sharp as most people. They will look at this thing. They will cast around them and see how they are going to defeat you getting this district of country taking in this railroad. Mind they want to check you off of that and they will cast round. And as I have said, they are pretty sharp. They will see where to strike. All their efforts will be at the smallest county; and they will rally to this county and vote against the Constitution and defeat the very object you have in view.

MR. HALL of Marion. I wish only to say, sir, upon the vote being taken on this and its rejection, I hope, by the body. I shall move to reconsider the vote rejecting the proposition of the gentleman from Ohio voted on yesterday. I voted against that yesterday; and it would be competent to reconsider it. I name that now as the proposition. I shall move to reconsideration of that, that upon the rejection of this, provision may be made as contemplated by the proposed amendment of the gentleman from Ohio yesterday. I voted against it yesterday because I preferred another matter, the other resolution to which it was a proposed amendment. I trust this may be voted down and the other adopted.

MR. LAMB. Mr. President, I am sincerely favorable to including the counties contemplated by the third resolution of the report of the Committee on Boundary. I think it must be apparent from the explanation given by the gentleman from Doddridge that to pass this amendment would defeat that object. That is all I have to say. Under such circumstances, I shall have to vote against the amendment.

MR. RUFFNER. Mr. President, is it to be understood, sir, that all these various propositions are to be voted on at once as a single proposition?

THE PRESIDENT. I so understand it—that the substitute or amendment goes altogether. Does any person call for a division?

MR. LAMB. There is no use dividing the question, because if the first proposition is rejected the last propositions are impossible and unless the first is adopted you cannot adopt the other amendments. They necessarily go in a body.

MR. VAN WINKLE. I was going to say that I believed I should have to put myself in the same list with the gentleman from Ohio and vote against this amendment. I was anxious this morning to give the gentleman from Monongalia an opportunity to get his amendment before the house and explain it. I thought it was at least worthy of consideration and I have endeavored to give it that consideration; and I have come to the conclusion, with the gentlemen who have spoken, that it will to some extent operate unfairly. I think, sir, that the effect of it will be injurious to our prospects, at least, when one county finds that its vote however cast is to be decided by the vote of another county in that way, there will be less exertion. For instance a report may spread in one county that another county upon which it is dependent, is going to vote against it, and they will give themselves no more trouble. I am therefore afraid of the operation of it. My great solicitude to have these counties cast in their lot with us, induces me to give to everything that is proposed to further that object as much consideration as I can; and my mind has come to the conclusion, sir, in reference to the proposed amendment, that it is not so likely to do it.

In connection with that I have even more maturely considered the resolution as it stands, and I believe it is upon the whole the fairest proposition that can be made. It is so fair, sir, an extension of courtesy, that it goes beyond what might seem absolutely to be required. Upon the principle alluded to this morning that we are taking these people in by districts, a majority of the votes in the whole district would seem to be sufficient. But owing to the circumstances in which those counties are placed and our want of full and accurate information concerning them, in order to counteract if possible the effect of merely partial voting in any county, we have had the provision that a majority of the counties shall vote affirmatively. Then it certainly requires that a majority of the counties—say six out of ten—if there are so many—four out of seven—must positively give an affirmative vote in favor of being connected with us. And then the affirmative vote given in those counties and in the rest of the district must be a heavier vote than is cast in all the counties against it. This is giving them a competent ratio by which the fact of their adherence to the new State is to be determined. And I think gentlemen will find that it is going about as far as it is possible to go—considering always that we wish them to come in if a full majority of their people, if that could be ascertained—are in favor of it. While we have given up the idea of compelling them to come in, and are to leave them free to decide it for themselves, as I have more than once observed, the mode first reported by the committee originally is the fairest mode that can be propounded, to them. Those are my present sentiments, after a good deal of reflection. The amendment that has been indicated by the gentleman from Marion does not reflect against what I said. I am speaking of the general features in reference to the mode of voting, and what amount of it shall determine the question. I repeat again that proposed by the resolution is as fair as we can possibly make it.

MR. DILLE. I do not rise for the purpose of making any extended remarks upon the amendment presented by my friend from Monongalia; but I desire to say in reply to my friend from Doddridge that if we should vote against this amendment and in favor of the original proposition as it stands without amending, we will have more trouble on his Baltimore connection than he imagines. Personally, it may be known to you all, or the greater proportion of the members of this Convention, that I have warm sympathies and feelings in connection with this batch of counties, situated as I am, as I have been, and as I expect to be, their connection with the people among whom I live is so intimate that we feel a deep interest in reference to these counties. But I would call gentlemen's attention to this fact, that as the resolution now stands, if we pass upon it, have a disconnected state. We may have a state with no connection whatever. I understand—and if gentlemen will look upon the map they will see—that there are seven counties now embraced in this resolution, and the purport of the resolution is this: "that if a majority of the votes cast within said district"—that is the first provision—"on the third Thursday of April, in the year 1862, and a majority of the said counties, are in favor of the adoption of this Constitution"—now, sir, to show you this state of things may exist, you have only to look at your map and see that it is at least possible and I think highly probable that this state of things may exist. Suppose for instance, the counties of Jefferson, Berkeley, Frederick and Morgan, four out of the seven, cast a majority of their votes in favor of the present Constitution, then they are a majority of the entire seven counties having cast their votes in that way, they will be disconnected entirely from the residue of the State already taken in by our previous action. Gentlemen may say that this is not possible, but I think it is not only possible but highly probable. Suppose the armies should be removed from the county of Jefferson, Berkeley, Morgan and Frederick before this time, and it should not be removed from the other counties, then the armies being removed they may cast their vote and desire to come in and be a part of the territory. But supposing then that you pursue a different course and say that the majority comes in the other way, why you embrace counties then entirely against their will. But in the other connection and in compliance with the resolutions of the gentleman from Monongalia if you take in one of these counties you take them all. In fact you may embrace every county within this region of country; and it is my conviction upon that subject that if we embrace a portion of these counties then we ought to embrace them all. They are connected and identified with us. They really belong to us so far as their interests are concerned. It may be that I am under a misapprehension and really after a little reflection I am inclined to believe that I may be under a misapprehension. Suppose four of these counties decided against it. Why then we lose them all. Supposing a majority of these votes cast against it, we lose the whole batch, and we lose them because of a certain contingency. Suppose, Jefferson or Berkeley, Morgan or Frederick decided the other way, why, sir, then we lose our railroad connection and the whole batch is lost. And then we have no connection whatever. But take the resolutions now before the

Convention as a substitute for these resolutions, you take in these three counties that are immediately connected with us, who are lying right by our side, and having connected them it becomes a continued chain, and we embrace the whole.

MR. HALL of Marion. Mr. President, let me correct the idea the gentleman from Preston has taken of this. If I understand him he says that under that resolution if we take in a part of the counties that vote in favor of coming in and the others should not then we would have these counties in without having any connection with them. I understand this resolution is either to take them in whole or part of them.

MR. DILLE. Suppose these four counties vote the other way, then you get no part of them.

MR. HALL of Marion. No part of them. That I understand to be the effect.

The question on the adoption of the substitute offered by Mr. Willey was put and it was rejected.

MR. SINSEL. If it would be in order, I move the previous question.

MR. HALL of Marion. I trust the gentleman, after the announcement I made, will not move the previous question until I have an opportunity of moving reconsideration.

MR. SINSEL. That is the very thing I want to move it for. I will withdraw it.

MR. HALL of Marion. I now wish, Mr. President, to move to reconsider the amendment offered by the gentleman from Ohio on yesterday; and upon the question I shall only say this.

MR. VAN WINKLE. State the substance of it.

MR. HERVEY. I call the gentleman's attention to the eighth rule.

MR. HALL of Marion. The eighth rule saying that a question being once determined must stand as the judgment of the Convention and shall not again be drawn into debate. That does not interfere at all with what I propose. It is always in order to reconsider.

The Secretary reported the amendment as follows:

By inserting in the third resolution, after the words, "third Thursday in April, in the year 1862" the words, "or such other day as the legislature of Virginia may appoint," in the twenty-fourth line.

MR. HALL of Marion. I voted against this yesterday because I preferred the original resolution to which this was an amendment. The Convention having by a tie vote rejected the resolution which I was anxious should have been adopted, it occurs to me then it is eminently proper whilst we provide for taking the vote of these people that we provide against a contingency which all admit may arise or exist when the vote of these people may be taken, if not upon that specific day, upon such other day as the legislature in its wisdom and under circumstances all of which will be known to them, may determine. It occurs to me, when we propose to give them the privilege we ought to provide the way and means to give them an opportunity to vote on it. I do not desire to occupy any time with the discussion of the question.

MR. PARKER. Mr. President, as I remarked yesterday it seems to me that this, as was well remarked by the gentleman from Wood, peculiarly a question which should be deferred for the present. As I remarked yesterday for the Convention here to now transfer to make over to the legislature, the power of fixing it when—

THE PRESIDENT. I would remind the gentleman that the question is on the reconsideration.

MR. PARKER. Not upon its merits. I wish to speak upon its merits.

MR. HAGAR. I have objection to the amendment, provided in the wisdom of the legislature they change the election for the whole State. If it is in reference to the whole State—if the legislature may change the day for holding the election, not in that particular district but for the whole State, I am opposed to the amendment.

MR. PARKER. I am, Mr. President, against the reconsideration. The question was fully argued yesterday, as I understand, by several parties and deliberately settled. It seems to me we have enough ahead to get along with without going back, where the thing has been well argued and settled, without going back and going over it again. The motion suggested by the gentleman from Ohio indicated a short time ago of limiting discussion on this boundary question on which we have been spending so much time, I was in favor of. I was certainly desirous of getting through with this question as soon as possible and do justice to it. I must therefore for the reason that it was thoroughly argued and settled yesterday, object to this reconsideration.

MR. HERVEY. I would desire the explanation of the Chair upon the eighth rule. It stares me, sir, in the face, and I really cannot get over it: "A question being once determined must stand as the judgment of the Convention and shall not again be drawn into debate." Now was not this matter decided last night?

THE PRESIDENT. The Chair would remind the gentleman from Brooke that that rule does not apply to questions of reconsideration. The motion to reconsider is ruled by the Chair to be in order.

MR. POMEROY. I would suggest to my friend from Marion to withdraw that and let us get through and vote on the question of boundary. If that is reconsidered it will open a lengthy discussion on that very question. I would just suggest to him to withdraw it for the time and let it come up again.

MR. HALL of Marion. I would withdraw it with a great deal of pleasure, and never introduce it, if it is to be the subject of so much discussion, if it were not for the fact that it is a part and parcel of the very terms and conditions on which we are to admit this very question of boundary; and for that reason it is necessary that it should be acted on now. It is a part of this thing. I cannot disconnect it. I would accommodate my friend if I could do so.

MR. CARSKADON. I hope it may be the pleasure of this Convention to reconsider the amendment that was voted down yesterday. I think it will give us a greater advantage in having a chance to vote; and therefore I think it an advantage to the counties named, and I do not think there is any need of much discussion on the subject as it was fully discussed yesterday; and I think there being different circumstances today, that they might change and no doubt will as they have changed the mind of the gentleman from Marion, the vote on this question if it is put upon its passage again.

The motion to reconsider was agreed to; and the question on the amendment offered yesterday by Mr. Lamb, which was to amend the third resolution of the report of the Committee on Boundary by inserting after the words "third Thursday in April, in the year 1862," in the twenty-fourth line, the words, "or such other day as the legislature of Virginia may appoint."

MR. VAN WINKLE. That brings up the amendment of the gentleman from Ohio. I want to move to amend that amendment by inserting after "or," in the words thereby proposed to be inserted, these words: "if from any cause such elections are not held on that day, then on," so that the legislature may provide for holding them on a later day. It does not leave the whole subject open to the legislature. But if on the day appointed, the elections are not held from any cause whatever, the legislature may then appoint a later day for holding it.

MR. LAMB. I accept the amendment; that is the intention of the resolution.

MR. PARKER. Mr. President, I wish to say a word on the merits. Under this resolution, as I understand this question is to be submitted to the vote of these counties. If anything happens that on the third Thursday of April, 1862—anything in the judgment of the legislature—that the vote cannot then be taken, then it must afterwards be submitted to all the counties, every one of them, before our proceedings in getting the new State can go any further. If anything between this and the 19th of April should transpire that in the judgment of the legislature, it would not be practical to submit it and get the vote of all these counties, then the whole matter is postponed—postponed nobody can tell how long. Now between this and the 19th of April nobody can tell what will be the condition and feelings of our present legislature. I suppose it is competent for other counties, as far as the seaboard counties, to elect any time they choose to send their delegates to our legislature. Things may change in a week. The enemy may be swept away from the whole of eastern Virginia, Richmond reclaimed by the Federal forces and the whole of eastern Virginia may be represented in our legislature. So far as our legislature is now composed I have as much confidence in that body as in any other; but there is an uncertainty there; but if we conferred upon a legislature liable to be changed—even if I believed we possess the power to so delegate that power it would be unsafe and unwise to commit a matter of that importance to such a contingency. Suppose this should take place and an unfriendly legislature should come here and they postpone it and postpone it, and the whole thing is gone. That is inevitable. But I hold we have no power to delegate it. It is not a matter of delegation. We have the power; we can recommend and ask the legislature to do certain things. We can ask them to change these boundaries; but our Convention is competent to fix when the votes are to be taken. If we ask them to change the bounds on certain conditions, when the time comes to prepare the schedule, we can fix the conditions on which or the time when the vote shall be taken. We shall probably be here a month; some say six weeks. Well, we can tell better at the end of that time than we can now what will be needful and can fix it in the schedule. Why do it now? It can be done at any time before the Convention adjourns *sine die*. I hold so far as I am concerned that this power is committed to me alone. I have no discretion over it. It is confided to us as a matter of trust and we have no right to delegate it to another. No principle of law or equity is better settled than where a personal trust is given it cannot be delegated. Can I transfer the little powers conferred on me here by my constituents and put somebody in my place? No, Mr. President; it is a breach of trust. The delegates cannot without the consent of their constituency transfer so important a matter—a power to postpone it forever and perfectly frustrate the whole object and the new State from the beginning. In the last six months the reorganized government has spent hundreds and thousands of dollars to get up a new State and now we go and place the whole of it in the power of a legislature of whom in four months may be three-fourths will be against us. And they will postpone it till the day of judgment. I am against it.

MR. LAMB. I merely wish to say in reference to the amendment, the Convention will perceive that it can only operate in a single case—that these elections cannot be held on the day designated. It is not proposed to postpone the day at all.

MR. PARKER. May I ask a question. Suppose it be found in the course of events which we cannot anticipate that it is impossible to hold the elections on that day.

MR. LAMB. In such case it provides that the elections may be held at the earliest moment they can be. I trust I appreciate properly the character of this Convention; yet I am very far from supposing that all wisdom or propriety will be extinct when this Convention shall have finally adjourned, or that there is no other body of men delegated by the same people who are entitled to the confidence of the people of West Virginia. I take it that the legislature which assembles here, representing virtually the people of West Virginia, elected really by the same constituents that sent us here, are just as anxious as any of us can be to go on and perfect the organization of the new State and that they will do nothing any more than ourselves that would be inconsistent with our great objects. But why talk of delegating power to the legislature? Why this argument urged on this Convention? Why, gentlemen, that legislature may do just what they please in regard to this matter. They do not ask you to delegate any power to them. All you can do is to recommend to that same legislature to direct the election to be held. Your recommendation may have great weight; but so far from your delegating power to them it is merely a proposition to them, carrying with it, it is true, the weight which would justly attach to it under the circumstances; but having no legal force. Our whole proceedings are mere recommendation to the legislature and the people—to the legislature in order that they may adopt such measures as will tend to secure the people a free expression of opinion upon the result of our labors—a recommendation to the people that they may be pleased to ratify what we shall have to submit to them.

MR. POMEROY. Will the gentleman from Ohio explain this point: If the legislature find elections cannot be held on the day appointed at what time in the opinion of the gentleman will they designate the day of election? And provided that three out of seven counties vote on the day specified, and the other counties do not vote, and give a large number in favor, and upon another day the other counties vote and give a much larger vote against, will that not defeat the whole seven counties coming in? I submit that to the gentlemen who are so urgent for all these counties to come in. I just wish to add, might not the single county of Frederick poll a vote that would overbalance the other six counties if they knew just exactly what vote they would have to poll? How will the legislature know that the way is not clear until the day passes? And then how long in the future is that day to be specified? Can it possibly be more than forty days—later than the first of June—if we want to get this matter before the present session? And will it not give the one county the power to overbalance all the other six counties?

MR. LAMB. I thought in the remarks I made yesterday I had fully explained what I think will be the operation of this resolution. If it be impossible to take a vote in these counties, with communications by railroad and telegraph, that matter will be known to the legislature within two days at farthest; and they can immediately take such action as may tend to facilitate as far as possible, if it be possible. It may be the legislature would be satisfied it would be impossible to accomplish the object. All such questions must necessarily be left to the action of that body, who will have then much more light on this subject than we have now and will be able to meet every contingency and difficulty I have no doubt, with as much propriety as we can meet it. As to the difficulty the gentleman raises in regard to the vote in one county, the legislature will provide properly for that, no doubt, if any proper provision is practicable under the circumstances. The whole object of this motion is simply to get these counties in, if it be possible, and whenever it can be found that upon a fair expression of the sentiment of this district of territory the people there desire to come in.

MR. PARKER. One moment. I cannot agree with the gentleman that it is a recommendation; but suppose it is. What is the necessity of our making that recommendation now, this early? We can make it any time before we adjourn. There is no necessity for its being made now. Why tie our hands up now? Even in the form he wishes the recommendation will have no weight until we get through—before we adjourn. We shall get a good deal of light doubtless, as he remarks, before that time expires. Shall we tie our hands up now and conclude ourselves for always, or shall we wait until the time arrives when we are obliged to dissolve the Convention? Then perhaps the condition of the country will be so that we can fix to a certainty. We can say to the legislature, we wish you to appoint such a day and take the sense of these people. Or then we can qualify it. If it happens it cannot be taken on that day, then within forty days, thirty or twenty. We can put some limit; not give them forever. That is my objection.

MR. POWELL. It seems to me that by adopting this amendment we shall cause considerable delay in getting our Constitution before Congress. Yesterday without properly reflecting on the subject I voted for the amendment. I shall necessarily have to vote against it today, taking this view of the subject as I do.

MR. LAMB. I wish to make just one remark—

MR. HERVEY. One moment. We will have no legislature at the time indicated in the motion. We disclaim, of course, any disposition to distrust the legislature. There is nothing of that kind involved on our part; but the term of the session will have expired fully one month before this proposition can reach them. Now it will involve a delay of near a whole year, not four or five months. The legislature will not assemble and cannot act on this proposition for one year from this date, or nearly so.

A MEMBER. Two years.

MR. HERVEY. Now to make the action of the legislature certain we must presuppose there will be an extra session. We have no knowledge there will be such; and consequently I cannot vote for this. I think it will be an indefinite postponement.

MR. LAMB. I am certainly somewhat surprised at the objections urged to this resolution; and in reply to the remark of the gentleman from Brooke, I would say that all of our proceedings contemplate that the legislature must be in session here as soon as this Constitution is ratified by the people and give their consent and send on the Constitution to Congress at the very earliest moment. Therefore if you want their action—if it be found impossible to take the vote at the time appointed, they are here in session—necessarily so. In regard to the idea that it will postpone the action of Congress I take it for granted we may leave that to the legislature. If the legislature, which will then be in session, consent to the formation of the new State, we know that if they find that ordering any vote will delay action, cannot we trust them on that question?

MR. POWELL. Mr. President, I call for the yeas and nays.

The yeas and nays were ordered. The vote was taken and resulted:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Battelle, Chapman, Caldwell, Carskadon, Cassady, Dering, Dille, Dolly, E. B. Hall, Hubbs, Lamb, Lauck, O'Brien, Ruffner, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Stuart of Doddridge, Van Winkle, Warder—25.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Hansley, Haymond, Harrison, Hervey, Hagar, Irvine, Montague, Mahon, Parsons, Powell, Parker, Paxton, Pomeroy, Taylor, Trainer, Wilson—19.

So the amendment was agreed to.

The question recurred on the resolution.

MR. PAXTON. It appears to me there is one amendment that might be adopted with propriety before proceeding to a vote. I refer to the clause here fixing the day at which the vote should be taken. I presume it is the intention that the counties named in the resolution shall vote at the same time as the others in the bounds of the State. Such being the case, if we adopt the resolution, as here, which reads: "provided a majority of the votes cast within the said district, at elections to be held for the purpose on the third Thursday of April, 1862, or, if from any cause such elections are not held on that day, then on such other day as the legislature of Virginia may appoint," we fix a time for the vote to be taken on this Constitution.

THE PRESIDENT. I would remark to the gentleman from Ohio that the impression of the Chair is that the whole work will have to be reviewed, and that so far as these dates are concerned it is very uncertain what they may be.

MR. PAXTON. I thank the Chair; but still I do not see why we should now do anything that we may have to undo hereafter. I was going to suggest to strike out "on the third Thursday of April, 1862;" and that the blank be left to be filled when we have agreed on some day, as we must, in the future for submitting this to the counties. The suggestion occurred to me; and I move —unless I am mistaken in my view of the case—to amend by striking out the date and leaving the blank to be filled hereafter when we will have agreed upon a date at which the Constitution itself will be submitted to the people for ratification.

MR. STUART of Doddridge. I must be permitted to say a word or two. The committee in fixing that time took into consideration the fact that we desired to submit this Constitution to the people and to the legislature in ample time to get it before Congress; and that the committee desired to extend the time as far as possible in order to accommodate these people who are laboring under the disadvantage of being overrun by the rebel army. We thought the later we could put it in order to suit our views and not to hinder our Constitution going before Congress the better it would be for our people. It strikes me the time is as near right as we can fix it. It may be before we can finish our labors here, it will be necessary to change it. It is unnecessary to strike out now. It can be stricken out when it comes up for final consideration.

MR. VAN WINKLE. It does not necessarily follow that the time in the forty-four counties will be the same. When we reach that point in the Constitution, it will be provided for. As the gentleman says the time was considered; and in inquiring when Congress would probably adjourn, it was considered that that was as long a time as could be given. That is the reason why the day is fixed. But I think it had better remain.

MR. PAXTON. I am not disposed to be at all pertinacious about this matter; but I cannot see what propriety there is in naming a day when it is to be changed if we intend the vote to be taken there at the same time as in the other counties. Why not leave it blank? We have to fix the day when this shall be submitted and this vote taken. Why determine that now? Why do a thing now that we shall have to do hereafter? Why not leave this blank and let the blank be filled when we determine, as we must do, the day for submitting to all the counties?

The question upon Mr. Paxton's motion being put, there was a tie vote. The President voted in the negative; so the motion was not agreed to.

MR. STUART of Doddridge. Mr. President, I now move we have a vote on the passage of the resolution, and I desire the ayes and nays, and hope we shall adopt it.

The Secretary reported the amended resolution as follows:

RESOLVED, That the district comprising the counties of Jefferson, Berkeley, Morgan, Hampshire, Hardy, Pendleton, and Frederick, shall also be included in, and constitute part of, the proposed new State—provided a majority of the votes cast within the said district, at elections to be held for the purpose on the third Thursday in April, in the year 1862, or, if from any cause such elections are not held on that day, then on such other day as the legislature of Virginia may appoint, and a majority of the said counties, are in favor of the adoption of the Constitution to be submitted by this Convention.

The yeas and nays were ordered, the vote was taken and resulted:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Brooks, Battelle, Chapman, Caldwell, Carskadon, Cassady, Dering, Dolly, Hall of Marion, Haymond, Hubbs, Hervey, Hagar, Lamb, Lauck, Montague, Mahon, O'Brien, Ruffner, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Stuart of Doddridge, Taylor, Trainer, Van Winkle, Warder, Wilson—33.

NAYS—Messrs. Brown of Preston, Brumfield, Dille, Hansley, Harrison, Irvine, Parsons, Powell, Parker, Paxton, Pomeroy—11.

So the resolution was adopted.

MR. STUART of Doddridge rose.

MR. STEVENSON of Wood. If the gentleman will give way, I was merely going to state that I would offer a resolution now before any business came up—one that would not excite any discussion.

MR. STEVENSON sent his resolution to the Secretary who reported it as follows:

RESOLVED, That a committee be appointed, to be called the Committee on Revision and Engrossment, and to be composed of the chairmen of the several standing committees on the Constitution, whose duty it shall be to revise the language, and arrangement of the several articles, sections and clauses of the Constitution, and to report the same, with the alterations they propose for the final action of the Convention.

The resolution was adopted.

The President stated that the question recurred on the fourth resolution of the report of the Committee on Boundary, which was reported by the Secretary as follows:

RESOLVED, That the district comprising the counties of Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, and Botetourt, shall also be included in, and constitute part of, the proposed new State—provided a majority of the votes cast within the said district, at elections to be held for the purpose on the third Thursday in April, in the year 1862, and a majority of the said counties, are in favor of the adoption of the Constitution to be submitted by this Convention.

The question on this resolution was put, and it was rejected.

The question recurring upon the fifth and last resolution of the report, it was reported by the Secretary as follows:

RESOLVED, That this Convention respectfully requests the general assembly to make suitable provision for holding the elections mentioned in the preceding resolutions.

The resolution was adopted.

MR. BROWN of Kanawha and MR. VAN WINKLE rose.

MR. BROWN of Kanawha. In looking at that resolution, it refers—

MR. VAN WINKLE. I believe I was first on the floor. I was merely going to observe, sir, that the question would now recur on the adoption of the whole report; and that therefore as that might excite some debate, I was disposed to favor an adjournment.

MR. BROWN of Kanawha. The resolution asks the legislature to make suitable provision for holding the elections mentioned in the preceding sections and the preceding sections refer only to taking a vote in these counties to come in or not and no provision for taking the vote in the counties within the fixed boundaries.

MR. VAN WINKLE. That is for the schedule.

MR. STUART of Doddridge. I move that the Convention now adjourn.

The motion was agreed to and the Convention adjourned.

XV. FRIDAY, DECEMBER 13, 1861.

The Convention was opened with prayer by the Rev. Henry C. Sanford, of the M. E. Church.

The minutes of the preceding day were read.

MR. VAN WINKLE. I notice it is stated on the minutes that the gentleman from Monongalia had leave of absence for eight or ten days. That is rather indefinite. I think it had better be made for ten days. It had better be stated ten days.

The Secretary made the correction suggested.

MR. CALDWELL. I hold in my hand a proposition which I desire to offer for the consideration of the Convention, to be taken up hereafter by the Convention. It would necessarily, I think, sir, form a part of the business of the Committee on the Fundamental Provisions. I merely ask that it be laid on the table and printed.

The proposition was read as follows:

No debt whatever shall be contracted by, or on behalf of the State, except to meet casual deficits or failures in revenues, or for expenses not otherwise provided for, but such debt or debts, direct and contingent, singly or in the aggregate, shall not at any time exceed $3,000,000.

In addition to the above limited power, the State may contract debts to repel invasion, suppress insurrection, defend the State in war, or to pay the State's equitable proportion of the public debt of Virginia existing on the first day of January, 1861.

The general assembly shall never on behalf of the State guarantee or assume the debts of any county, city or town within this State, or any corporation whatever—nor shall the credit of the State be in any manner given, or loaned to, or in aid of any individual, association or corporation whatever—nor shall the State become a joint owner or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever.

MR. VAN WINKLE. That would go, I apprehend, to the Committee on Taxation and Finance.

MR. CALDWELL. I have no objections, sir.

The proposition was accordingly referred to the Committee on Taxation and Finance.

MR. STEVENSON of Wood. I do not see the chairman of the Committee on Education present, yet I would just take leave to present to the Convention—or rather through them to the Committee on Education—a communication from Professor Martin, of Allegheny College, at Meadville, on the subject of education. I do not ask it to be printed. It is already published in the public journals; but I would just call the attention of the members to the fact that it may be difficult to obtain the same communication printed hereafter, and it will be a very important document to be referred to even after this Convention have adjourned. I would suggest to them the propriety of obtaining it in the paper. I do not want it printed. I merely wish to call the attention of the committee and the Convention to it.

MR. STUART of Doddridge. Mr. President: I have a resolution to offer this morning in regard to the boundary question, sir; and I do it representing certain parties from Loudoun and Fairfax who insist that their claims shall be brought before this Convention. The following resolution is offered as an amendment to the report of the Committee on Boundaries. I ask for its adoption.

RESOLVED, That the counties of Loudoun and Fairfax shall also be included in and constitute a part of the State of West Virginia: *Provided*, a majority of the votes cast in the said counties, on the third Thursday of April, in the year 1862, be in favor of the new State, and also in favor of the Constitution that may then be submitted to them by this Convention: and *provided*, further, that the said counties of Loudoun and Fairfax are not to become a part of the new State except the district composed of Jefferson, Berkeley, Morgan, Hampshire, Hardy, Pendleton and Frederick, become a part of the proposed State.

The President stated the question to be on the adoption of the amendment to the report of the Committee on Boundary.

MR. STUART. I would merely say, not to enter into an argument, that there are a good many persons now in our city from the county of Fairfax, and the county of Fairfax is represented in our legislature. They are exceedingly anxious that this thing should be submitted to their people. They say they want to come, and that there is no less than 500 citizens in the county of Fairfax driven into the city of Washington. If we have a new State they are exceedingly anxious, and they want an opportunity of expressing it, to go with us. I hope it will be the pleasure of this Convention to give them the opportunity. We do not propose to take the county unless the district composed of Jefferson, Berkeley, Morgan, Hampshire, Hardy, Pendleton and Frederick be received as part of the State, because then they would be disintegrated from the State of West Virginia. But if this district comes in, then if the counties of Fairfax and Loudoun vote for the adoption of the Constitution to be submitted to them, then we have a continuous boundary which includes the Capital of the United States, or within a stone's throw of it; while if Fairfax county is included in the old State of Virginia, there is within a stone's throw of the Capital—and I presume it will not be looking with any idea of the contingency that a Southern Confederacy will ever prevail; but I say that we should always look to the contingencies that may possibly arise. I do not say that there is even a probability of it, but such a thing might happen, and if it does, why then, sir, the enemy would be within gunshot of our Capital. And I think it would be prudent to include those two counties for our self-protection and for the protection of our Capital. My attention has been called to the City of Alexandria. I have no doubt in the world but what that would be included in the boundaries of the District of Columbia. I understand that it is moved now, that congress and government down there wants it receded again—want it back; and I have no doubt the legislature of Virginia will grant that district the City of Alexandria including the old boundaries of the District of

Columbia. And consequently, it is not necessary, it seems to me, for us to take any notice of that at present. I believe the Convention understands all about this matter, the reasons that influence the motion. It is done, I say, at the instance of my friends and of your friends who are representing you here in the state legislature, who are doing everything they can to sustain you, who are voting and will vote to give their consent to the formation of the new State; and they are friends, too, in every particular and in every instance; and they want it done for the relief of, they say, from 500 to 1000 fugitives driven from their homes. And if they ever are permitted to go back, there will be such legislation towards them by eastern Virginia that they cannot remain at their homes unless they be included.

MR. DERING. Mr. President: I shall be constrained to vote against the amendment to the report. It seems to me, sir, that the gentleman from Doddridge is upon a roving expedition to include all the territory around about us. Yet, sir, as I said in the commencement of the discussion on this boundary question, I am opposed to the annexation of a single foot of territory except what is absolutely necessary, as I deem, to our prosperity. Sir, we took in five counties the other day arbitrarily, *nolens volens*, as the gentleman from Marion says, and included them in our territory. We have gone on from that step and we have taken in five other counties that border on the Baltimore and Ohio Railroad. And now, sir, encouraged by the advances we are making for the annexation of territory, the gentleman from Doddridge asks us to go right down into the very heart of old Virginia and take Fairfax and Loudoun.

Now, Mr. President, this asking for more territory is only increasing, in my estimation, our complications—only tending to increase our embarrassments and to delay the formation, as I believe, of a new State. That will be the effect of it, sir. It seems to me, sir, that it becomes this Convention to pause before they take in these counties; and it seems to me, sir, that the gentleman by asking for these additional counties is endangering, in my opinion, the passage of the whole report. Sir, there must be some place at which we will have to stop; there must be some pause in this addition of territory. Sir, it seems to me that we should not include the counties of Loudoun and Fairfax. Sir, the gentleman wants this Convention to take Mannassas—for I believe it is in the county of Fairfax. I do not presume he wants to embarrass the inauguration of a new State but it seems to me the inevitable effect of including these two counties tends only to embarrassment and delay. All the information we have, sir, goes to prove that it will be difficult to get our new State through Congress and every complication of this kind only increases the embarrassment and delay. Sir, I want nothing to stand in the way of our onward progress towards a new State, and I shall oppose every amendment that will have that effect while, sir, I have the honor of having a seat in this Convention.

MR. BROWN of Kanawha. Mr. President: the motion to include the counties of Loudoun and Fairfax appeals very strongly to my prejudices, and I confess a very strong desire to accomodate those people, and extend to them the right-hand of fellowship; but at the same time it seems to me it is a wide departure from the propriety of the case and that it ought not to be done. We come here to make West Virginia a new State. We profess to be the people of West Virginia. We have assumed the name of West Virginia, and the eastern border of that territory ever has been the Blue Ridge. But having marched up to it in a hypothetical case, to extend our limits and cross beyond it and pillage the territory of the old Dominion—and that too that territory which is about as old as almost any in the limits of the state—a little behind Jamestown—is going a little too far and it will subject us to the condemnation of being a little too grasping.

There is another consideration that moves me. We have undertaken to restore the Government of Virginia—the Loyal Government. If we succeed in the establishment of the new State, of course that Loyal Government must immediately upon the recognition of the new State terminate within its boundaries. The Loyal Government of Virginia, however, is still supposed to be in existence; and if there is any restoration of the Loyal Government for the security and protection of the Loyal men of the State it must continue to exist and extend itself over the residue of the State. Otherwise all the Union men are left at the mercy of a government as hostile against them as is possible. Take away Fairfax and Loudoun and you have left that Loyal Government with not one foot of the territory to stand upon in its dominion. You must leave that territory for it to stand upon as a base of operations, in order that under the influence of the general government it may be restored to the rightful control of the entire soil of the state south of it. If we do not do that, we have the Union men all over east Virginia, who are now silent as the grave, who are beneath the tread of tyranny, who are looking wishfully to the progress of the Union cause and for its speedy coming to their relief—without a solitary ray of hope, and they have no other alternative but to yield at once and take part in that rebellious government that is seeking to destroy us all. It seems to me that considerations of regard and fellowship for the Union men there forbid us trampling on one foot of the territory east of the Blue Ridge; and with this view I must vote against the amendment.

MR. STUART of Doddridge. Just one moment, sir, in reply to my friend from Kanawha. He seems to think that we ought to leave the counties of Loudoun and Fairfax as a kind of Union nucleus around which the old state is to be reorganized and brought into the Union. Now, sir, I do not understand that there is a Union man permitted to stand upon the soil of Fairfax and Loudoun; and if he wants a nucleus around which such a government can be gotten up, I understand that Accomac and Northampton are the only counties in the possession of Union men. I sometime since took leave of my friend from Kanawha. But I want to point out to him just a minute further an inconsistency, and that is this: you know how strenuously he was in favor of including Randolph, Mercer, Monroe and Greenbrier from the fact that it was necessary for our protection—necessary for our defense—because it would give us a natural defense that we did not have. Now, the same reasoning, if the gentleman will only look at it, at least as I view it—the very same reasoning that influenced him to urge upon this Convention the adoption of the resolution including those counties, would carry him to the conclusion that we ought to include the counties of Loudoun and Fairfax, because they, sir, are equally necessary for the protection of our Federal Government. Equally!

But I did not intend to enter into an argument but to refer to one remark made by the gentleman from Monongalia (Mr. Dering) and that is that it militates against our chances of getting this new State. Now, look, Mr. President! Remember that there is now 500 men of the county of Fairfax—or maybe 1000—in the city of Washington and who are appealing to you to come into the new State. Those men have influence, and they are right around the Cabinet at Washington and the Congress; and if you say they shall not have the opportunity to come, they will band together and effect more against our interest than including possibly effects. Now, reflect upon this. Now, mind what I tell you, if you don't see these Union men—fighting for our cause, standing in our legislature to-day—if it don't band those men together against our interest and prospects of getting a new State.

The President stated the question to be on the adoption of the amendment.

MR. PARKER. Mr. President: One moment, no one feels more gratified than I do, Mr. President, that our friends there should recollect and even wish to join us. It has given me great pleasure. What little I could do, if I could do it consistently, I would be glad to do in their behalf. But from the reasons stated by the gentlemen already, it strikes me that I cannot. There is this view, which seems to me important and which we ought to understand fully: whatever territory we take in, of course the State assumes the expenditures for. That is a point, it seems to me that should not be lost sight of, particularly if the policy of the new government is to be to divorce the State from the work of internal improvements. West of the Alleghanies we have very few internal improvements. The state has invested comparatively but little. The internal improvements in the west of the Alleghanies, in the main, are now to be built up. If the new State is to stop contributing to any part, why then of course, it is to devolve on the people of each section. It has got to be done by your children without any aid of the State. Well now, if we take in any sections where the old State of Virginia have largely expended three-fifths in building up all the roads, railroads and the necessary improvements and conveniences which make a country, why what is to be the result? Why the new State has got to pay three-fifths. All living west of Alleghany, which in fact have comparatively no railroads compared with that section, have got to be taxed to pay for these improvements. They do not want any more. We have got to go in in fact and help pay up what they have cost and then we have got to go to work and build up our own, and if the divorce takes place between internal improvements and the State, they are not to help us to contribute one dollar towards it. Whenever we get a railroad here we have got to put our hands into our pockets and get some capital to go in and do it.

The result is we pay the improvements in their country and they reciprocate to us nothing. Now I find the Alexandria, Loudoun and Hampshire road is entirely within these two counties. It runs from Alexandria to Leesburg. The State has expended in stock $841,748; and then the loan besides of $400,000, I think. No, there is no loan. $841,741 is the state stock subscribed. Now, the other road is the Orange and Alexandria. That goes out towards Manassas Gap, as I understand. Well, that has been $862,316.08 is the stock. The loan to that road is $400,000. Eight and four is twelve. Well, that road is not all in Fairfax. That goes on to Mannassas Gap, and I think on to Richmond. About $70,000 a mile is the general estimate of the cost of these railroads. And whatever there is in Fairfax that cost would fall upon us.

MR. BROWN of Kanawha. My friend from Doddridge seems to think that there is some inconsistency in the course I have pursued arising out of the fact, I suppose, that he and I voted together sometimes and sometimes we have not. I have endeavored, sir, in the support of propositions before the house, and in opposition to them, to pursue a course that I deemed for the best interests of the State and my constituents, and I have pursued the idea of securing the best boundary that I thought possible to the safety and prosperity and permanency of this new State we are forming. I have not succeeded in getting it all precisely as I wanted it. But one policy has been to enable us to have a boundary that really was defensible. Whether in pursuing that idea I have been inconsistent or not is a question I must submit to my constituents and not to the gentleman from Doddridge.

In reply to the argument of the gentleman as to this boundary that is now proposed to be taken, it does seem to me it is at war with all the doctrines and ideas we have both been urging upon this Convention for fixing a mountain barrier between us and what may be, or would be, a hostile state or republic. If we are to take the territory proposed in these two counties, we are departing from that great principle of mountain barriers nature has constructed for the defense of those on either side, and leaving nothing but an air-line between two populous peoples—a line, in a military point of view, that is almost indefensible. Why, the whole State, men, women and children, that we shall form are scarcely equal in numbers to the armies now on that very territory to keep back those that are seeking to over run it. It seems to me that it is the weakest point—that it ruptures every argument he has urged in behalf of the territory we have heretofore included. If we are to undertake the defense of the government of the United States, then indeed we shoulder a Herculean task. I have not been actuated in my course by any such motives. My object has been to obtain a state border that was the most easy of defense and would render us the most secure. While we would expect in every difficulty the government of the United States would be with us to aid us in maintaining that boundary, yet to assume for ourselves the high position of defending the Government of the United States and throwing ourselves by a border between it and the Confederate forces—if such a thing shall be hereafter established—had not entered my mind before. I had not supposed before the gentleman announced it that he had even dreamed of such a proposition.

MR. DERING. I was unfortunately led into an error in supposing that Mannassas was in Fairfax. My friend from Marion who had the map before him told me it lay in Fairfax. It lies in Prince William.

The argument of the gentleman from Doddridge is that there are 500 Union men in Washington who desire to come in. Now, sir, I sympathize with them as much as the gentleman from Doddridge. I sympathize with them deeply; but if our sympathies for Union men are to control us in making a boundary for the new State, where shall we stop? There are Union men, I have no doubt, in every county of the whole State; and many of them in many of those counties would desire to come with us and help form this new State. Therefore, sir, we must not be controlled by our sympathies but our interests and what is due to the new State. But yesterday, sir, they wanted the Blue Ridge for the line. Now they are for traveling on, and after while, sir, they will give us the whole State of Virginia. Let us not take these pills in broken doses but let the gentleman come up with all the territory he wants at once, and let us know what we are to depend upon in that respect.

MR. HALL of Marion. I desire to add but a word. I confess, sir, I have been an advocate for natural boundaries and still am. There are many considerations that lead me really to desire to include these counties; and many reasons—good reasons, so far as my judgment goes—why we should not include them. There is one fact that I deem a matter of importance to us. If we had a natural boundary between these counties and the counties from which we propose to dissever them, it would be a matter of the very first importance that these counties should be included in and made part of our State. It is the nearest point at which we can reach ocean navigation. The water is deeper in that channel by considerable than it is at Baltimore; and it is much nearer to us. We can reach it through these counties more readily than at any other point. It does occur to me that that would be a consideration that would weigh—ought to weigh—considerable in the scale of importance. I have no doubt at all in my mind that the people of those counties desire to come in, that if they had an opportunity to do so they would vote to be part of our new State. I know that was the sentiment expressed by every one with whom I met during the conflict at Richmond. They were identified with us in our every movement; they stood by us on the question of Union; and were really with us in our movements in looking to the protection of western interests, and they have always been identified with us in interest and in feeling. But whilst I would take some persons in who did not want in with us, I would be bound for the same reason to leave out, under some circumstances, those who wished to go with us. I must confess, sir, that I can see nothing in the argument of my friend from Cabell with reference to the debt we would incur by taking these within our boundary. There are railroads built there at considerable expense, but at the same time they are worth all they cost, and more, too. But suppose we are preparing to divorce ourselves, according to a resolution offered for the consideration of the Convention this morning, it ought not to influence us in our action because the railroad would be of some good to us if we are to take these counties. The railroad that leads from Leesburg, if extended—which, of course, it would be necessary that it should be—would be an improvement that all the people of the entire State would demand and require should be completed; and it would be one of the most important improvements for us—not for them locally, but for us—as forming a line and channel by which we could connect with the deep channel of water there—the shortest and most direct and best point at which we could reach it.

These are considerations. I confess, whilst I have been termed a fillibuster, that there are several reasons why I do not so much favor this proposition, though I feel very much inclined to extend to them the hand of fellowship; and at the same time I am very much inclined to think it will not be for any good at present. I have no objection to including Mannassas Junction. It is about as short a way as we can take to capture Beauregard and his troops, and I would be willing to surround them with our line. I do not see very well how we can include these two counties unless we take Clarke in order to make a straight line, because Clarke will lie right between one of these and the ones we have already proposed to take, and it would stand out, as some one remarked, in reference to another, like a wart, an excresence of the old State, protruding itself right into our territory. However, I shall not move to amend. But these are considerations that are entitled to weight and consideration here. The very fact that by this line of communication with that deep channel of water will give us an opportunity to build up there that that we now have in the city of Baltimore whenever anything may occur that would make it to our interest or make it necessary that we should have a port of our own and be independent. It would be to our interest at any time. That, it occurs to me, is an idea and consideration that should influence us here.

The question on the amendment proposed by Mr. Stuart of Doddridge was taken by ayes and noes, and the amendment was rejected.

MR. SHEETS. I have a resolution here which I desire to offer.

It was read by the Secretary as follows:

"RESOLVED, That, inasmuch as the counties of Hampshire and Hardy have complied with the provisions of the June Convention, they be included in the State of West Virginia."

MR. VAN WINKLE. Is that offered as an amendment to the report, sir? He had better just make his motion and withdraw that part of the resolution which states the reason. It is not in form to go into the report as an amendment. It begins with a preamble.

MR. SHEETS. I will state the reason that induces me to offer the resolution. The ordinance calling this Convention provided that a vote should be held in those counties and the sense of the people should be taken as to whether they were in favor of forming part of the proposed new State or not—those two counties, Hampshire and Hardy. The question was submitted to our people. The vote taken was a small one; but a majority of the votes cast at that election—a majority of the voters who cast their votes at that election, were in favor of connection with this State. According to the resolution passed yesterday, we are to come upon the same footing as those who have not taken any vote at all—Morgan, Berkeley, etc. In the counties of Hardy and Hampshire we have taken a vote, and we have declared by that vote that we are in favor of coming into the new State. I consider, sir, that I am not here to represent my own feelings in regard to that matter. I am here representing the wishes of my constituents—those who sent me here; and in justice to those people I consider it my duty to try to have those two counties added to the list of the 44 including the five we annexed the other day; and with this view I offer the resolution that those two counties may be included in the list of the 44, without submitting the question to them again as to whether they are in favor of forming part of the new State or not.

THE PRESIDENT. Will the gentleman accept the amendment suggested by the gentleman from Wood?

MR. VAN WINKLE. I do not suggest any amendment. I said this resolution was not in form to be acted on. If the gentleman wants to amend the report, he himself will have to put his amendment in shape to be acted on. If he wants to offer an independent resolution he must reserve it until the report is disposed of.

Mr. Sheets modified his resolution, which was again read by the Secretary as follows:

"RESOLVED, That the counties of Hampshire and Hardy be included in the State of West Virginia."

MR. DERING. If I understand the gentleman, his motion now is to amend the report?

MR. SHEETS. That was my object—to offer it as an amendment.

MR. VAN WINKLE. If he will make a motion to insert the resolution as the Clerk read it just now in the report, that will answer the purpose.

MR. SHEETS. I accept the suggestions, of course.

MR. CARSKADON. I am sorry to take issue with my colleague on this subject; but I consider it my duty and shall not shrink from it. I do not wish to occupy the attention of this body, being too young to assume to occupy much time before men of age and experience. Neither do I wish to reiterate the argument that I made when I first stated my position as a member from Hampshire. That was that I believed it to be the desire of my constituents, the Union men of Hampshire, to come into the new State, providing the adjoining counties did the same. I am of the same opinion yet; and I rise for the purpose of objecting to the amendment of the gentleman from Hampshire. If we are to be included at any rate without a chance, he will claim that it is not peremptory, that we have complied with the ordinance of August. I do not believe that met the approval of our voting population. A gentleman claimed the other day that that was not a fair expression of the views of the people of Hampshire, and so I think too. We have about 14 precincts in our county. We opened polls at two precincts, and there was less than sixty votes cast at the two precincts. At the precinct at which I was elected—for they did not know at the other that I was a candidate—there was but 39 votes cast, I think. Seventeen were against the division of the state. And, why, will be naturally asked by the Convention. Because they were afraid of this very thing that the gentleman from Hampshire now proposes, that we would be included without a chance to go to the Blue Ridge. That, sir, was the expression of the people of that part of the county that voted for me; therefore, I feel it my duty to oppose the amendment. They were anxious to come in and have expressed a desire to come in the new State. They knew well their interest was with the new State, and so I know and believe it to be; but, sir, they knew it was to the interest of the State, and vastly to their interest, that the adjoining counties should be included, and they were not, if I understand them, willing to come into the new State unless some of the counties east of us came in. They objected to being the border, the tail end, of the new State. Because the Alleghany mountains is the natural line of the new State as proposed in the ordinance of August; because if you don't go further, you have no natural boundary. The people of Hampshire know this to be the fact; therefore they are extremely desirous that the counties beyond should come in. Therefore, I shall object to the amendment under the present circumstances; and if it seems to be the pleasure of the legislature, as I said on yesterday, to include us of Hampshire and Hardy, the circumstances are all before them and it will be for them to decide. Then we know all the circumstances after voting—the action of the adjoining counties; whether it would be wisdom to include the counties of Hampshire and Hardy without the others. And I hope it may be the pleasure of this Convention to give them a chance, to vote, as we voted at but two precincts out of about 14.

MR. SHEETS. Mr. President: I am very sorry, indeed, that my friend should oppose that resolution. I am sorry to have to differ with him on that question. The gentleman says that a majority of his constituents—or those who voted for him to come here as a member of this Convention were in favor of the county coming in and forming a part of the new State if we also include the counties lying East of us. Now, I call upon the gentleman to produce the evidence that there were any such votes cast in the county of Hampshire. The question was . . .

MR. CARSKADON. I can do it, Mr. President; but I think any such remarks out of order.

MR. SHEETS. I have, sir, before me the ordinance of August last, calling this Convention, and that ordinance provides that polls should be opened in the several counties therein named, and if the majority of the votes cast at the time was in favor of the division of the state and so reported on, that they should elect tickets to represent them in this Convention. My worthy colleague and myself are here representing that people. A majority of the votes cast in that county were in favor of the division of the state and according to that vote we are here to represent the county.

The gentleman alludes to there only being polls opened at two precincts in the county. It was not because there was no Union men in the other part of the county, but it was simply because the polls could not be opened on account of military hostilities. At the precinct at Piedmont there was but very few votes polled and but one against the division of the state; and the gentleman who cast that vote didn't vote for any delegate to go to this Convention—didn't vote to be represented in this Convention; and I hold that any man who cast a vote at that election unless he was in favor of the division of the state had no right to cast votes for delegates to come here to represent him in the Convention. If a majority of the county that cast her vote in October last said she was in favor of a division of the State, I can see no necessity for submitting the question again—the very same question they have once taken a vote upon. I hold we are justly entitled under the ordinance here, having complied with that ordinance, that we are a part of the proposed new State and that we should be included on the same terms as the other counties and the five that were added the other day.

MR. LAMB. Mr. President: it strikes me the whole matter is out of order. The 8th rule is that a question once determined must stand as the judgment of the Convention and shall not be again drawn into debate. Certainly if we did determine anything by the resolution that was adopted yesterday, it was the precise question here presented that Hampshire and Hardy should have an opportunity of coming in if they came in with these other counties; that they should be admitted as a whole. That was the resolution we adopted yesterday. If the gentleman wants to get at this question it must be by a motion to reconsider that vote and bring up the whole subject again before the Convention. But without reference to any question and with no desire to tie any gentleman down to a strict observance of the rule, I will say that I am fully satisfied that this is the district, if it is to be annexed at all, should be annexed as a whole and not these two counties separately. I do not intend to argue that question again, for it has already been fully discussed and I think directly decided. But there is one question which is raised by the motion and to which I would direct the attention of the Convention. It is said that Hampshire and Hardy have voted under the ordinance of August 20th; that a majority of the votes cast were in favor of the new State; that they have elected delegates to this Convention; that having therefore fully complied with the conditions set forth in the ordinance, they are entitled to admission here. Mr. President, this is not the ordinance of August 20th. The ordinance of August 20th says that if these conditions are complied with, then this Convention may admit them. It doesn't say they shall have a right to be admitted; but the matter is then addressed to the power and discretion of this Convention, whether they shall be admitted or not. Look at the section of that ordinance. It doesn't say the Convention *shall;* it says the Convention *may.* That was right and proper. It was no slip of the pen. It was right and proper that the ordinance should be as it is. It was right and proper, and the circumstances under which the application is made shows the propriety of it. The ordinance spoke of the majority of the votes cast. A majority of the votes cast might be but a very small portion of the voters of the county; and therefore it was proper that although a majority of the votes cast on this question might be in favor of the new State, that the matter should be addressed to the discretion of this Convention and not made mandatory and imperative on them, in order that if the majority of the votes cast did not represent a substantial portion of the voters of the county, the Convention might say it is not proper upon that motion to admit the people of that county. It was proper for considerations that it should not be made imperative on this Convention—the very considerations which led the Convention yesterday to decide that if we admitted these two counties, it was expedient that the neighboring counties should come along with them. There were in Hampshire county 16 votes against at Piedmont precinct and 179 votes at the other precinct in favor of the new State, amounting to 195. The voters of that county include two thousand, I have been told, but I cannot state it as a fact—it is merely what I have heard—that of the 179 votes which were cast at New Creek precinct 100 were cast by a company of soldiers stationed there.

MR. CARSKADON. Will the gentleman allow me to make an explanation? I was at New Creek during the whole two days' election. The polls, in consequence of Kelley's arriving there were kept open two days; and if I am not mistaken—of which I have now no doubt—but that I am correct in this assertion—there was not over 39 votes cast of citizens of that vicinity who had a right to vote for delegates for this Convention. The rest were soldiers.

MR. LAMB. Well, that is about the information that I had.

Then, gentlemen, this question is addressed—even by the strictest construction that can be put upon the ordinance of August 20th—to your sound discretion; nothing in it imperative upon you. Have you such an indication of the sentiment of Hampshire county as enables you to say that they have come properly within that condition? Or if they have come properly in that condition, it is still for you to say, as you did say yesterday, according to your best judgment, whether it is proper that those counties should be admitted by themselves.

THE PRESIDENT. The gentleman from Ohio having raised the point of order . . .

MR. LAMB. I am not particular about the point of order.

THE PRESIDENT. Well, the Chair had some doubts himself about the propriety of the motion, but was disposed to give the gentleman from Hampshire and opportunity to test the opinion of the Convention, and now entertains strong doubts whether the vote ought not to be put on the amendment as offered or whether it would be proper to move a reconsideration.

MR. STUART of Doddridge. If I understand it, this question never has been submitted to this Convention, in reference to the admission of Hampshire and Hardy. There has been no resolution offered that has decided the sense of this Convention on this before and I admit that it is now raised by the gentleman from Hampshire. If any gentleman can call my attention to an opportunity to vote on that question, I stand corrected. I have not had the opportunity to give my vote that way. No question has ever brought it up in this form, to include Hardy and Hampshire peremptorily.

But while I am talking to the question of order, let me just remark that I am now undecided. I find the two gentlemen representing the county of Hampshire differing; and let me say to the gentleman from Hardy that my vote will be influenced by whatever his views are on this subject. It is the first time I have been undecided.

MR. DOLLY. Mr. President, I am here to represent Hardy, and my constituents wish to come into the new State. I was sent here to answer for them; and I would wish the vote to be taken according to the amendment.

MR. HERVEY. My recollection coincides with the recollection of the gentleman from Doddridge. The proposition to strike out certain counties—five or six—was before the Convention, leaving out Hampshire and Hardy . . .

MR. STUART of Doddridge. With the conditions attached.

MR. HERVEY. But the proposition now up never was before this Convention. In regard to the vote alluded to by the gentleman from Ohio, I do not see from the last clause of the 3rd section of the Ordinance of August 20th that the soldiers would be prohibited from voting. They are not prohibited. The vote in those counties stands upon a different footing from the vote to be taken in the other counties named. "If the said counties to be added, or either of them by a majority of the votes given, shall declare their wish to form part of the proposed new State, and shall elect delegates to the said Convention, at elections to be held at the time and in the manner herein provided for." Not confined to the votes of one county but to all the votes given. I do not think that that will prejudice. If we are going according to the law and testimony, let us stick to it. If they are not excluded they have a right to vote. However much I might doubt the propriety of their voting, still if they are not excluded, they have a right to vote under the ordinance.

MR. VAN WINKLE. I am very sorry to note that whenever we depart from the rules we are consuming time unnecessarily; and I know of no better way, sir, to economize time than to stick closely to the rules, and I do not believe any of the motions made are going to help it. The rules that govern this house are founded on the experience of centuries, and on a few days experience here it would be hardly wise to change them. I throw that out for general consideration. Now, sir, that this is strictly out of order, as the question has been stated here, I can make apparent to every member. This report was to be taken up and proceeded in section by section and then the whole question was to come up on the adoption of the whole report, when motions to strike out and insert would be in order. We passed from the section, sir, containing these two counties. The Convention had expressed itself not on this precise resolution but on what ought to be done with these counties: and if they did not the opportunity was afforded to the gentlemen while the third resolution was under consideration to offer the present amendment. Substantially, sir, this was defeated; because a motion was made by the gentleman from Doddridge to strike out the whole proviso, leaving not only Hampshire and Hardy but others in the same category to come in absolutely. Well, sir, I do not know how the Chair stated the question, or whether he stated it at all; but the only question before us this morning was on the adoption of the whole report. We not only passed upon or finished the third resolution, but took up the fourth and defeated it and took up the fifth in reference to the application to be made to the legislature to provide for elections, and passed that; that completed the report. Now, there was no other question before us this morning but just: shall this report be adopted as a whole? Then, sir, this having been placed in the same category as motions from the standing committees, a motion to strike out or insert would be in order. But the gentleman moves to add to the report, not to substitute—to make an independent proposition, leaving it, in the first place, in the report that Hardy and Hampshire and these other counties are to vote on a certain day according to the terms of the resolution, and then another that Hardy and Hampshire are to come in anyhow, making the report entirely inconsistent with itself. It is then, sir,—unless the Chair decides that the report was taken up and that there is a proper question before the Convention—it is out of order absolutely. If we were upon the question of the adoption of the report, then if the motion had been in proper form it might have been in order. I think, sir, we had better start again and say the question before the Covention is upon the adoption of the whole report then if the gentleman will move to strike out what is already in the report concerning Hampshire and Hardy and move to insert in place of it what is in his resolution, that would be in order, sir.

THE PRESIDENT. The expression of the President was distinct. Upon the announcement of the fact, the gentleman from Doddridge moved to amend or add thereto. After the disposition of the question on that amendment, the gentleman from Hampshire introduced an amendment which is now up. The Chair had very strong doubts at the time that it was introduced whether it would be in order. The Chair recollected distinctly two things that had occurred in the Convention. One was that while this reviewing was proceeding on this report, the Convention without completing a section would pass over to another and make such amendments . . .

MR. VAN WINKLE. If the question is now on the adoption of the whole report, then the gentleman from Hampshire's motion would be this: to strike from the third resolution so much as relates to the counties of Hampshire and Hardy, and to include the counties of Hampshire and Hardy in the first resolution. The effect of that would be to leave the other counties included with them to vote and decide the question for themselves, but to take these in as Greenbrier, Pocahontas, etc. were taken in. If that can be understood to be the question before the house, the Clerk can easily make it right and then we will know what we are doing.

THE PRESIDENT. I may be wrong; but that is my recollection.

MR. HALL of Marion. I have hastily prepared what I propose to offer as a substitute, provided it meets with the views of gentlemen and will not lead to any discussion. I have written it so hastily that I will read it. The proposition is an amendment to and substitute for the motion of the gentleman from Hampshire:

"Provided, also, that though the said district comprised of the counties of Pendleton, Hampshire, Hardy and Morgan, Jefferson, Berkeley and Frederick may not vote to constitute part of the four counties first named"—that is Pendleton, Hampshire, Hardy and Morgan—"Herein shall give a majority of votes at the proposed election in favor of the new State, then that the district composed of the said four counties be included."

I do not know whether it will meet the views of the gentleman or not.

THE PRESIDENT. Does the gentleman from Hampshire accept the amendment?

MR. SHEETS. No, sir. My object simply is to have those two counties stricken out of the third resolution and added to the first.

MR. HALL of Marion. I withdraw it if the gentleman does not accept it.

MR. VAN WINKLE. I would suggest, with all respect to the members of the Convention, that everything that pertains to these two counties has been thoroughly discussed, that the questions that relate to them are thoroughly understood, and that we might take this vote, I think, without more discussion, unless there is something new. We have spent a good deal of time on this.

THE PRESIDENT. The question is on the motion of the gentleman from Hampshire to strike out.

MR. HERVEY. As I understand the form of the motion, it is that they will not be included in this resolution but attached to the list of counties in the first resolution?

MR. SHEETS. Yes, sir.

The Secretary reported the proposed amendment as follows:

"RESOLVED, That the counties of Hampshire and Hardy be stricken out of the third resolution and inserted in the first."

MR. CARSKADON. I wish to be distinctly understood in this matter. On yesterday the Convention fixed this matter as I thought best for the interests of the State and of our county, and it will be with reluctance that I see the thing changed, if it must be so; but I shall bow to the will of the Convention. But I hope it may be the pleasure of gentlemen here, as the thing, I think, was fixed in the most wise and very best shape and in the shape that suited me—it does not my colleague; he has a right to have his opinion—but suited me, and which I thought for the interest of the whole district, therefore I hope these counties will not be stricken out. As I said before, the legislature will have the whole circumstances before them and if they see proper to include Hardy and Hampshire peremptorily then it is within their power. But I see no reason—I think no sufficient reason at least—to affect the mind of any member of this Convention, why those counties should not have a chance to vote again. Does any member of this Convention say that less than sixty votes out of 800 or 900 Union votes, to count nothing else, out of a community that sometimes polls between 2200 and 2500, can be called an expression of the people of Hampshire county? If they do I disagree with them.

Therefore I hope it may not be the pleasure of this Convention to strike out Hampshire and Hardy from the resolution.

The question was then taken on the motion of Mr. Sheets to strike out and it was rejected by the following vote:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Chapman, Cassady, Dolly, Hansley, Haymond, Irvine, Montague, O'Brien, Parker, Pomeroy, Ruffner, Simmons, Sheets, Stuart of Doddridge, Walker, Wilson—18.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Caldwell, Carskadon, Dille, Hall of Marion, Harrison, Hubbs, Hervey, Hagar, Lamb, Lauck, Mahon, Parsons, Powell, Paxton, Sinsel, Stevenson of Wood, Stewart of Wirt, Soper, Taylor, Trainer, Van Winkle, Warder—25.

The question recurred on the adoption of the report.

MR. RUFFNER. I understand, sir, it is in order to offer an amendment to the first resolution, or rather to move a reconsideration of a vote taken to amend that resolution. My motion, sir, is to reinstate the counties of Buchanan and Wise in the first resolution. I shall give but one reason . . .

MR. LAMB. Excuse me for one moment. On what side did the gentleman vote?

MR. VAN WINKLE. Mr. President, I know the gentleman from Ohio does and I do attach some little importance to the order of proceeding a resolution was brought in by the Committee on Business that,

> "Every report made by a standing committee shall in its turn, be considered and be open to amendment, section by section; but the vote on the passage of any section or clause shall not be final. The question shall recur on the passage or adoption of the whole report as amended and motions to strike out and insert shall be in order."

If I recollect rightly, sir, the chairman of the committee, the gentleman from Doddridge, when this report was taken up moved that it be considered by that resolution. As chairman of the Committee on Business, sir, I endeavored to explain both the object and operation of that resolution. I said that the Committee on the Order of Business had had under consideration the matter of referring these resolutions to the committee of the whole; that there were disadvantages attending that; and to get the benefit of the committee of the whole this course had been adopted. I have had occasion once or twice during the progress of these debates on the amendments that have been offered to the different resolutions to state to gentlemen that what we were doing was not final and that certain amendments would come in better on the question of the whole report. We are now through the report, section by section—that is, it is now in precisely the situation as if it had been committed to the committee of the whole and that committee had risen and reported to the house. That report would be this that the committee of the whole had had the subject referred to them under consideration and had made the following amendments or alterations. Then the whole question comes right up before the house. Now, sir, we are in that stage of the business as we shall be on every report before the Convention; and it is to be hoped, sir, that when gentlemen have seen the disposition of the house manifested strongly, they will not for factious purposes merely introduce the same amendments already once disposed of. It is now precisely the state of the case that was contemplated by this resolution when a general amendment might come in before the report is finally disposed of. I consider therefore the motion made by the gentleman from Kanawha is in order—that it is not, as the gentleman from Ohio supposes, a reconsideration. But I trust that gentlemen will not consider it necessary to go over the same ground we have gone over.

MR. LAMB. The first question we decided in reference to the report on boundary was how Buchanan and Wise should be disposed of.

That was the very first question. We decided numberless questions since in regard to the matter and we have got through and the question now comes up on the final disposition of the report. We are now going back to begin at the beginning and go over the whole thing again from the start, I suppose. If this motion is to be entertained, we have got back precisely to the starting point; and I suppose from the disposition that is exhibited this morning that we will go through regularly and decide over again what we have decided already. The gentleman from Kanawha, if he voted with the majority upon that question has a perfect right to move a reconsideration. Any member who voted with the majority who has changed his opinion and desires to change his vote has a right to move a reconsideration, but not one who voted

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MR. PAXTON. It appears to me if the views of my colleague should be sustained in the decision of the Chair, it would place us in rather an embarrassing position. The gentleman will recollect probably that yesterday evening I made a motion to amend one of the sections of this report by striking out the date. It was then stated, as has been stated time and again, that this was not final, that at any time in the future when we came to consider the whole report it could be amended in that particular as in every other. Now, I do not suppose that the presumption is that after you have amended in that particular or in any other a motion for reconsideration is necessary. If it should be, it would preclude our own amending or changing anything that we have done. The decision of the Chair yesterday evening was that when the report came up for final action—as it has been declared time and again—that then amendments were in order of any character. And this has been the uniform action of the Convention on the matter up to this time.

THE PRESIDENT. I think the Chair can satisfy the Convention of the propriety of his decision in this case. There is no doubt on the mind of the Chairman as to what has been continually understood during the proceedings upon the report of the committee and upon other committees; and the Chair distinctly recollects that when the question was pending on these two counties they were told that they might be stricken out and inserted in the other resolution.

A Member said: I supposed that was lost. I think I recollect distinctly it was then lost.

THE PRESIDENT (Continuing). On this report a motion could be made to reinstate them with the counties of Monroe, etc. Well, to prevent any misunderstanding hereafter, the Chair is disposed to make the statement more fully. The Chair recollecting when the gentleman from Ohio put his motion last evening as to striking out, told him he could at any time move to effect his object after the report was passed upon first, the various sections. He has no other recollection at present but that; but again the Chair is under the impression that it would not require a motion to reconsider even if it had not these other advantages. There are other considerations connected with these counties then that do not exist now. There was another resolution proposing to place a body of counties adjacent to us within the boundaries of the new State on certain conditions. That resolution has since been divided. Those counties would have been to some extent provided for had that resolution passed. But that resolution has been divided and the precise question that now is raised by the gentleman from Kanawha has never been before the house in the opinion of the Chair. Therefore the Chair would hold the motion of the gentleman from Kanawha in order; would with pleasure give the Convention the opportunity to decide it by appeal if they choose. He may be wrong.

MR. LAMB. I can assure the Chair it will be a very extreme case when I appeal from its decision on a question of order.

MR. VAN WINKLE. Does the Chair decide that the principle involved here—not in the particular case—but after a report from a standing committee has been gone over section by section and the question recurs on the adoption of the report as amended, that then it is still in order for a gentleman to propose to strike out and insert? That is substantially the resolution. That is the decision of the Chair? Well, now, sir, to relieve the gentleman from Ohio from the delicacy he feels, I will appeal from the decision of the Chair and let us have the decision of the Convention upon it, although I am in favor of it.

MR. LAMB. There is no doubt whatever about the question. The simple question was not whether it was in order to move to strike out but whether it was in order to move to reverse the decision that had been had before. These counties, Buchanan and Wise, were inserted in the first resolution. They were stricken out of the first resolution and now the motion again is, not a simple motion to strike out and insert new matter but to reverse, as I supposed, the decision that was made before. The Chair has decided that the motion is in order and there is no use of an appeal.

MR. STUART of Doddridge. Do I understand the appeal as having been taken?

MR. VAN WINKLE. I took it to accommodate the gentleman from Ohio.

MR. LAMB. I raised no question of that sort.

MR. VAN WINKLE. I thought it was as well. I will withdraw it if such is the wish of the Convention. I thought it was just as well to have the opinion of the Convention on it now and then it would not be drawn into question hereafter. I would add the single remark that a permission to strike out and insert—the greater always includes the less—does authorize a motion to strike out simply and insert simply.

MR. RUFFNER. I was going to make a single remark in support of the motion I had made; and I trust those gentlemen who are here taking notes will not put before the public what I say.

In the progress of this debate, sir, and in the consideration of this question of boundary great changes have taken place. A decision of the Convention has enlarged the original boundary considerably on both sides. They have added on the eastern side—at least in the opinion of the Convention—a considerable extent of territory which is to be added to the territory of the new State. That extension assumes a form which might be called a horn. We have already on our northern border a horn and I think it eminently proper to extend the spinal column to the other extremity; and the names of the two counties to be added are peculiarly appropriate to suggest that caudal extremity I therefore make that motion (Laughter).

MR. PARKER. I would move an amendment. I believe that would be in order. The amendment is, as I now understand it, to add the counties of Buchanan and Wise. Would an amendment to that be in order.

THE PRESIDENT. Yes, sir.

MR. PARKER. I propose as an amendment to that amendment to include so much of the county of Buchanan as lies west and northeast of the Tug Fork of the Sandy river — making the boundary: beginning at the corner of Logan county and running up by the Tug Fork of the Sandy river until it intersects the line of McDowell. Looking upon the map gentlemen will see that there is a small piece of Buchanan in that situation that it would seem ought to come within our bounds. So far as the balance of the two counties is concerned, we have discussed them fully, and my mind is not, from anything that has since transpired on the subject, changed on the subject. But that small piece lying in there it seems to me would make a much better boundary than running from the corner of Logan up by Logan line until it comes to Wyoming and then from Wyoming to McDowell and then back

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responds with the small maps which we have here. If I am in error in that particular, I do not wish now to offer any substitute.

MR. HERVEY. The map which I hold in my hand is of the latest date—1861, and by that map this stream does not form the boundary line of these two counties. But I cannot say whether the river has changed or the map has changed. But it does seem to me the report of the committee would be much better if it called for these streams—Tug Fork of Sandy and Camp Creek, as marked on my map. I would suggest, however, that the matter be postponed and a little consideration given to the subject. It strikes me from the position of these streams that they would form a much better boundary for the county line.

MR. TRAINER. There seems to be a difference in regard to this river—whether it passes through a part of Buchanan or not. I suggest that you make the river the boundary no difference where it is, in Buchanan or out of it.

MR. POMEROY. What is before the house, Mr. President?

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Kanawha.

MR. POMEROY. No, sir; we have to take up all that whole question again of adding counties, and we are not ready. I would like that the gentleman from Kanawha would withdraw that motion. My recollection is that these counties were stricken out and inserted with another class; and the motion prevailed to strike them all out. Now there is a motion to bring them in, and if that motion is to be before the house, I desire to be fully heard on that motion, but I hope it will be withdrawn.

MR. RUFFNER. I could not accept that suggestion, having made the motion.

MR. STUART of Doddridge. I wish to draw the attention of the gentleman from Hancock to a certain fact. Under the rule we have adopted, we go through these reports section by section, making many changes. After we pass through them in this way, acting just as in Committee of the Whole, we then look upon the work we have done—the edifice we have built—and it may be necessary that we have an opportunity to correct errors we have fallen into. That avoids the necessity indicated by the gentleman from Wood of going into the Committee of the Whole; and unless we do stick to this rule we will perhaps commit errors here and not have the opportunity of correcting ourselves.

I say as one member of this body, I do not feel disposed to bring up a question that has already been decided. Whether this motion has been having (?) in connection with the whole report passed as amended, I know that my own mind is made up and I think the minds of the Convention perhaps are; but we will have to stick to the rule, sir. If we do not, we will not have that deliberation in our body that is necessary we should have. As I remarked, we have reared an edifice, and if it needs amendments, we ought to have the opportunity of making them.

MR. VAN WINKLE. I venture to say that if any gentleman here would put a motion here that the Convention had decided against, it would have a factious appearance. I consider a motion put in that way could only be for the purpose of creating unnecessary debate, because the inference would be the decision of the Convention would be as it had already been before. But in this case it is free from that objection for these two counties it may be said have not had a fair trial. The committee placed them in the first resolution with the district that was to be admitted absolutely without vote. When the question came up for consideration, the gentleman from Ohio moved to strike them out of the first resolution; and it then was with the understanding that they would be added to the second district, table B. When table B or resolution 2 came up for consideration, I reminded the chairman of the committee of that understanding, and by unanimous consent of the Convention, those counties were placed in the second. The vote was to be taken on them together with Tazewell, Bland, Giles and some others. Well, sir, the question now up is not on the peculiar situation of Buchanan and Wise but on that whole district together and the Convention refuse to admit any of the districts. Now the gentleman from Kanawha simply asks the Convention to consider these two counties separate and reinstate them in their original position, and it may be supposed, sir, that there might be less objection to admit Buchanan and Wise now after this string of counties running along the Alleghanies has been refused; than if all had been taken together. I can imagine such a thing, sir. That while this question is a fair one and is properly made by those who are in favor of their admission, it still cannot require much debate on the mere merits of it. We all understand what is the position of those counties, and the question now presented is a different one from any heretofore presented in reference to these counties. I therefore hope that it may have a fair consideration.

MR. POMEROY. I wish to be clearer. I do not want my friend to think I think his motion is out of order at all. But I only wish to suggest that this matter which has been twice decided, in my opinion, in regard to these two counties—that it was unnecessary. But if gentlemen think it is better to discuss this matter and take a new vote on it, I have no particular tenacity about it. I think we are taking action in this Convention very rapidly to kill the whole new state movement. I want to give the reasons why I think so.

MR. HAGAR. I suppose the Convention will recollect that I voted for striking out those two counties from the district of Greenbrier, etc., with the calculation that if we received those two counties—if they were embraced in the new State—these were to be annexed to them—at least, that they should have a trial again. When I voted in favor of those two being stricken out, my calculation then was that I didn't think it would go any further than Hampshire and Hardy. Well, there has been some five counties added in that direction; and considering the whole matter, it seems to me that it would be wisdom and would do our new State no harm but be an advantage, to add those two counties of Wise and Buchanan. Therefore, I am in favor of the amendment. I was one that made a speech against them and for striking out.

The question was then taken on Mr. Ruffner's motion to insert the counties of Buchanan and Wise in the first resolution, and the motion was not agreed to.

MR. PARKER. Now, I would move, Mr. President, if it would be in order, that the legislature may make our boundary from the corner of Logan up the Tug Fork of Sandy until it intersects the McDowell line, and thence by the McDowell line.

MR. VAN WINKLE. I know that will be out of order. The Convention have now decided that those counties shall come in. The gentleman now moves to exclude part of them. That won't do. It is out of order.

THE PRESIDENT. The motion of the gentleman from Kanawha was lost.

MR. VAN WINKLE. I beg the gentleman's pardon.

THE PRESIDENT. The gentleman from Wood withdraws his objection.

MR. BROWN of Kanawha. Which Fork of Sandy does the gentleman call the Tug Fork.

MR. PARKER. The left hand.

MR. BROWN of Kanawha. Then your object is to exclude the county of McDowell from the first resolution. About four fifths of it is excluded by this.

MR. PARKER. It is to begin at the northeast corner of Logan. We then run up the Tug Fork of Sandy River until that river intersects the McDowell line. Then of course we take that line.

MR. BROWN of Kanawha. I would move to amend the amendment—or the proposition—of the gentleman by beginning at the very point he designates and running with the Cumberland Mountain along the line between Kentucky and Buchanan until you reach the dividing ridge between the two forks of the Sandy, and then follow that dividing ridge until it intersects the great Flat Top Mountain which divides the counties of Tazewell and McDowell. That gives us a mountain barrier instead of a river boundary. The gentleman will observe that the southern boundary of McDowell and Buchanan are the counties of Russell and Tazewell and that boundary line is on the dividing ridge between the waters that flow east and west, or rather those that flow into the Ohio river on the one hand and those that flow into the Tennessee on the other. All the waters of Sandy head in that mountain range and flow from thence—from the back line of McDowell towards the Ohio, in a northerly direction, while the waters on the other side of the ridge run into the Clinch River. My object in making this motion is to secure a mountain instead of a river boundary. That fork of Sandy is a stream of considerable size; but if you take the river you split a neighborhood and you are splitting a county also.

A member suggested that the line was already there.

MR. BROWN of Kanawha. I understand the back line of McDowell is already on a mountain barrier; but the gentleman from Cabell proposes to run up the river, which makes a river boundary instead of a mountain boundary. I propose to make the side line the dividing ridge between the Clinch and Sandy Rivers. We all know that there are no two rivers that have not a divide between them.

MR. VAN WINKLE. There seems to be some difference in maps and differences of opinion about these lines. We all know that these county lines have all been surveyed and marked. If we adopt, for instance, the amendment of the gentleman from Cabell, we are going at it blind, emphatically. The maps differ and as to even the location of the rivers and call them different names, and so on. I think we had better stick to the county lines, because they have been surveyed and ascertained; and it is more than probable that they are determined to a considerable extent by such things as ridges and other natural boundaries.

MR. PARKER. Mr. President, I will withdraw my amendment. We have probably got land enough over there.

THE PRESIDENT. Does the gentleman from Kanawha consent to the withdrawal of the amendment?

MR. BROWN of Kanawha. Very well, I consent to it.

THE PRESIDENT. The hour of twelve and a half o'clock having arrived, the Convention will take a recess until half past three o'clock.

And thereupon the Convention took a recess.

THREE-THIRTY O'CLOCK, P. M.

The Convention reassembled at the appointed hour.

THE PRESIDENT. When the Convention adjourned it had under consideration the report of the Committee on Boundaries, as amended. There were then some suggestions which the Chair will now hear.

MR. HALL of Marion. The substitute that I offered I withdrew because I merely made it as a suggestion for the consideration of the gentleman who lived in that region of country. That is, the proposition to amend the third resolution by adding that if a majority of the seven counties should not vote to become part of the new State and a majority of Hampshire, Hardy and Morgan should, that they should be included. I have had a consultation with some of those parties. Some of them are anxious the Convention should vote on that proposition, and on account of that, and that only, I propose to offer that for the consideration of the Convention, thus giving an opportunity to four counties in a tier to be included if the whole seven may not. By looking at the map it will appear that that would give us—extend our line very nearly to Harpers Ferry and would give us a very respectable line of boundary. With a view to meet what seemed to be the wishes of those counties it occurred to me it would meet their object and it would be what some of the counties would have a right to ask. I therefore offer that as an amendment. That is, to insert at the end of the 26th line, the following:

"But if a majority of the votes in the said counties of Pendleton, Hampshire, Hardy, Morgan, Jefferson, Berkeley and Frederick be not in favor of forming a part of the new State, but a majority of the votes in the counties of Pendleton, Hampshire, Hardy and Morgan be in favor of forming part of the new State, then that the four last named counties be included."

Some of them propose that we should add to it the counties of Berkeley and Jefferson, and that would include all through which the railroad passes. I had only been providing for a tier.

MR. LAMB. Better take them all in.

MR. STEVENSON of Wood. That only leaves one out.

MR. HALL of Marion. This meets the object I had in view.

MR. PRESIDENT. Where does the gentleman propose to have his amendment come in?

MR. HALL of Marion. It has reference to the third resolution.

MR. VAN WINKLE. Might put it at the end. The Committee on Revision have to rearrange it.

MR. HALL of Marion. It would come by just adding it to the end of the section.

The Clerk reported it as follows:

"But if a majority of the votes in the said counties of Pendleton, Hardy, Hampshire, Morgan, Jefferson, Berkeley, and Frederick be not in favor of forming part of said new State, but the majority of the votes in the counties of Pendleton, Hardy, Hampshire and Morgan be in favor of forming part of said new State, then that said last named counties be included."

The amendment was adopted.

MR. STEVENSON of Wood. Mr. President, there is one other matter here that I would like to have amended, although I am precluded by the rules from offering an amendment, or offering a reconsideration. But I will state in a single word, almost, sir, the reason why I would like to have the vote reconsidered. I allude to the matter brought forward by the gentleman from Ohio last evening. It was to strike out the words "third Thursday of April" in all these resolutions.

MR. VAN WINKLE. It was offered as an amendment to the resolution then under consideration, and therefore he is not precluded according to the rule you established this morning.

THE PRESIDENT. Your amendment would be in order.

MR. STEVENSON of Wood. Well, sir, I would offer it, then. My reason is this, that we can insert the time before the Convention adjourns. If we find that sometime sooner than this, or even a later day, will suit the purposes of the resolution better. It can be inserted then. Another reason is this, that if we insert this day now it goes out and is published all over the new State as the time fixed for having this election and if we alter it afterwards it will lead to a confusion in the minds of our constituents. And a third reason is this, that I think the striking of this out and leaving it blank will strengthen the passage of the resolutions on the final vote.

MR. LAMB. I have no particular objections to striking that out but it would be necessary immediately, I take it, to have some action of our legislature ordering the vote. How long will the present legislature continue in session? We must have an act of the legislature ordering the vote in those counties on the same day. If we leave it blank until this Convention is prepared to adjourn, will not the legislature itself be adjourned by that time? I take it that it is necessary for us, therefore, to fix, and to fix speedily, the day that we want the election held upon. I have no objection to striking out, because as I said before, I have not made up my mind as to whether that is the proper day or not.

Mr. Stevenson's motion to strike out the date was then put and agreed to.

MR. SINSEL. Mr. President, I would offer an amendment, and it is this: to strike out after "1862" (which is just struck out) "and a majority of said counties." Now it seems that all parties have agreed that it was absolutely necessary that we should have these counties lying along the railroad. Well, there is a provision here that it requires a majority of the votes cast and also a majority of the counties. Well, now, this majority of counties might defeat us in this project, while we, at the same time would have a majority of the votes in the district. Three counties might give an overwhelming majority in favor of coming in and four might give a majority against and that would keep them out. Well, now, if we strike that out, then we have the benefit of the whole counties—the majority in the three overcoming the majority against it in the four and thus bringing the district in. It would then read concluding in this way: "Also be included in and constitute part of the proposed new State: *provided* a majority of the votes cast within the said district at elections to be held for the purpose on the third Thursday in April in the year 1862 are in favor of the adoption of this Constitution."

The question was taken on Mr. Sinsel's proposed amendment and it was rejected.

The question recurring on the adoption of the entire report, Mr. Brown of Preston demanded the yeas and nays.

Mr. Paxton called for the reading of the report as amended.

The report as full amended was read by the secretary in full.

MR. POMEROY. No doubt the gentleman from Marion intended to add a majority of the counties. That only said a majority of the said vote.

MR. HALL of Marion. I did not, because there were four of them.

The roll was then called and the report adopted by the following vote:

YEAS—Messrs. John Hall (President), Chapman, Caldwell, Carskadon, Cassady, Dering, Dolly, Hall of Marion, Haymond, Hubbs, Hervey, Hagar, Irvine, Lamb, Lauck, Montague, Mahon, O'Brien, Parker, Ruffner, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Stuart of Doddridge, Trainer, Van Winkle, Walker, Warder, Wilson—32.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Dille, Hansley, Harrison, Parsons, Powell, Paxton, Pomeroy, Taylor—11.

MR. VAN WINKLE. Mr. President, it has occured to me since this report was made that as this is a division of the state it would be necessary that the boundary should be set forth in the body of the Constitution; and it will also be necessary, perhaps, to describe in some way the Ohio boundary, in order that we yield nothing there. The ordinance establishing Kentucky, I think,—whether it was anterior to the ordinance erecting the Northwestern Territory or not I do not know—it ceded the territory lying to the northwest of the Ohio river. Under that a claim is made, while the jurisdictions for some purposes are concurrent, to the far bank of the Ohio as the territory of Virginia at this time by which, of course all the islands pertain to Virginia. If the river was made the boundary, then we take the middle of the channel, and that in most cases would throw the islands to the other side. It may be remembered that this question was before the general court while that court existed and the case arose from the apprehension of some abolitionists on the Ohio side of the river opposite my county. The court was then composed of twenty-one judges I believe. It turned out, sir, that there were three opinions in the court. One went for high water mark; one for running water mark; and the third for low water mark; and as there was not a majority for either, there could be no decision. It was a very singular case, and they had to admit the parties to bail and let them go. Still, the claim is to the other side of the river, and it would be proper for consideration whether we should not in the language in which the old ordinance is couched repeat the claim in this Constitution. I merely mention these things in connection with the motion I am about to make, and that is:

RESOLVED, That the resolutions reported to the committee on the boundary, as passed by the Convention, be recommitted to the said committee, with instructions to report a provision to be inserted in the Constitution embracing the substance of said resolutions and fully defining the boundaries of the proposed new State.

I think, sir, that would be the best way to meet the case.

The motion was agreed to.

Report on Fundamental and General Provisions.

MR. VAN WINKLE. Well, sir, I now move that we take up and proceed further with the report on Fundamental and General Provisions, and that the same be the order of the day until it is completed. That is, the final report. It will not exclude gentlemen from time in the morning to offer propositions and so on if they have any.

The motion was agreed to.

THE PRESIDENT. The question is on the adoption of the 7th section, as amended.

MR. LAMB. I move its adoption.

Several members called for the reading of it.

The Secretary read it as follows:

"In all elections by the people, the mode of voting shall be by ballot."

MR. SOPER. I wish to add to that section the following:

"Except for such local officers as may by law be directed to be otherwise chosen."

I have been familiar with the practice of voting by ballot and have seen some of the inconveniences arising from it. It is to avoid such, sir, that I have offered this addition to the section intended to be applicable more particularly to township and district officers.

Take, for instance, the overseers or surveyors of your highways—your township will be divided into perhaps 15 or 20 districts from which an overseer will have to be chosen. Now, sir, that is an office that will require a large number of names and a good deal of time to be spent in canvassing the vote. But is generally done in this way: one of the inspectors of election would give notice to the people what was about to be done and they would be chosen by motion.

Again, sir, if we introduce the common-school system, which I believe every gentleman here intends, our districts will have to be laid off into school districts probably a mile or two miles square. Every school district would have to have its officers. There will be trustees, school district clerk and probably a collector. Now if they have got to resort to the ballot, it will be attended with inconvenience and there is no benefit to be derived from it. People meet in the school-house and talk this matter over, motion is made and the officers are chosen. Again, when this question was up some gentlemen objected to the ballot in consequence of fraud. There have been frauds, sir, in the system; and one means of guarding against those frauds has been to have a particular kind of ballot box to receive the ballots. Now, sir, these boxes are to be taken out through all the districts. It will be attended with a good deal of inconvenience, and no benefit can result from it.

For these reasons, sir, I have seen fit to deem it necessary to offer the qualification to the section as first adopted.

MR. STEVENSON of Wood. I was going to ask, Mr. President, if we are certain we have the section as amended. I think the amendment offered by the gentleman from Hancock was a substitute for this.

The Secretary stated that it was offered as an amendment: to strike out all the words after "in all." The section as it would read if the amendment offered by Mr. Soper were adopted would be:

"In all elections by the people, the mode of voting shall be by ballot, except for such local officers as may by law be directed to be otherwise chosen."

MR. VAN WINKLE. I would suggest to the mover of the amendment whether his object would not be attained by reinserting the words "state and county"?—"In all state and county elections by the people, the mode of voting shall be by ballot."

MR. SOPER. I had thought in the first place of putting it "in all township elections."

MR. VAN WINKLE. We have not acted on the township yet.

MR. SOPER. I know; and for that reason I put it "local."

MR. VAN WINKLE. "In all state and county"—make those two positively by ballot.

MR. SOPER. Very well, sir, that will do.

MR. DERING. That would not embrace district elections, would it, for constables, magistrates, etc.?

MR. VAN WINKLE. That is what the gentleman proposes to leave out, sir, and it is for the Convention to decide whether they will or not.

MR. PARKER. It seems to be in doubt whether it should embrace Presidential and Congressional. "State and county"—is that confined to officers purely state, leaving out the election of Federal officers?

MR. VAN WINKLE. We are here at a loss from a circumstance that we cannot obviate at present but which may be obviated before long. There has been as yet no report from the Committee on County Organization. No report from the Judiciary Committee. We do not know what provision is to be made—whether a constable is to be a county officer or a township officer. I therefore suggest, sir, that we pass by this section for the present. When we have gone through this present report of the committee, I shall necessarily ask to let it lie on the table before taking a vote on the whole until the balance of the report is made. By that time it is probable reports from other committees will be in and be acted on, and then in the final adoption these corrections can be made.

I therefore ask that by general consent this section be passed by for the present.

MR. SOPER. I will consent to pass by but I intended my motion to be applicable to the township and district officers, meaning county overseers of the poor and the various officers whatever they may be.

Mr. Van Winkle's proposition to pass by the section for the present was put as a motion and agreed to.

The question recurring upon the 8th section of the report, the Secretary reported it as follows:

Sec. 8. No voter during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process; or be liable to attend any court or judicial proceeding as suitor, juror or witness; or to work upon the public roads; or, except in time of war or public danger, to render military service.

MR. VAN WINKLE. This is about what is in the Constitution of Virginia. There is one addition. The old one reads: "or be liable to attend any court as suitor, juror or witness." This adds "judicial proceeding"—intended to cover the taking of testimony.

Mr. Van Winkle read the corresponding provision in the Constitution of Virginia and said:

That leaves the voter liable to perform military service during the time necessary to go and return. It is probably an oversight there. He has the same privileges of exemption from military service during the time he is going and returning home as while he is at the election. That is the way it obviously ought to be made. Also that says time necessary. This adds and convenient. Now our polls close at sundown and if a man starts off he could get to the distant parts of his county by midnight. This would imply that he might wait until he gets his breakfast next morning and be protected during that time. They are verbal corrections and I think make the thing more explicit and better understood and are not unimportant.

The section was put to vote and was adopted.

The 9th section was reported by the Secretary as follows:

Sec. 9. All citizens entitled to vote, and no other persons, may be elected or appointed to any state, county, or municipal office, but the governor, lieutenant governor, attorney general, judges and senators must at the beginning of their terms of service, have respectively attained the age of twenty-five years and have been a citizen of the State for five years next preceeding, or at the time of the adoption of this Constitution.

MR. VAN WINKLE. I would state again, as chairman of the committee, that this is an attempt to embrace in one single provision, in one article and section of the Constitution, what is now scattered through several articles and sections. There is a provision where you speak of the executive and legislators, a provision about age and so on. This reduces them all to one; and I do not know but they may require a greater age for the governor, but otherwise they require seven years residence instead of five. The United States Constitution requires seven years citizenship for a member of the lower house and nine years for the senate. It strikes me for the purposes here he must have been a citizen of the State for the five years next preceding. They must, of course, be citizens of the United States and citizens of this State, which implies that they have been citizens for five years next preceding. I think the time is long enough.

MR. LAMB. I would suggest a difficulty that may arise out of the general terms in which this is expressed. As this is here expressed, any of the citizens entitled to vote could be elected a member of the house of delegates. Now, it is very probable the legislative committee may report to the Convention that the party should be entitled to vote in the county from which he is chosen. I take it if it rests upon this clause alone, a citizen entitled to vote in Kanawha county could be elected to the house of delegates from Ohio county and the reverse.

If that is the intention of the committee, all right. But the legislative committee may perhaps report that they ought to be entitled to vote in the county from which they are elected—members of the house of delegates—and that senators ought to be entitled to vote in the district from which they are chosen.

I want merely to direct the attention of the Convention to the question that may be involved in the general phraseology which is used here.

MR. PARKER. As to the provision requiring the governor, lieutenant governor, attorney general and judges to be residents for five years to be eligible, I notice that they vary in different states; some require for these offices a longer time and some a shorter time. It strikes me the time set here is reasonable. Of course for these high offices they should be resident in the state long enough to understand its peculiar interests and its laws; but when we come to senators I do not see how it applies. I see that for a member of the house of delegates a year's residence is all that is required. I see also by the present Constitution of Virginia, if I am not mistaken—I was looking at it this forenoon—the same residence is required for a senator as for a delegate. There is no distinction whatever. It is two years. I think I am right. There is no distinction between a senator and a delegate to the house. I do not see why there should be that difference. The senate has a little more dignity we know; but why a person to be qualified to be elected to that house should require a five years' residence and to the lower house of our legislature but one year—I do not see any reason on it. In looking at the provisions in many of the states, I see the same time is required for the house as for the senate. I like to see the judges and governor taken from old residents, but if we are going to open our new State to immigration, why we should be liberal to all classes. It seems to me that this so far as senators are concerned is going backwards instead of forwards. It is making a five years' residence when in 1850 at Richmond they made it two for a senator. No more than for a delegate. They must be a legal voter at elections, two years in the State and one in the county. That made them eligible to either house of the general assembly. I should therefore move, Mr. President, to amend by striking out the word "senators" in the fourth line of the Resolution.

MR. LAMB. For the information of the Convention I will read the provision in the present Constitution: "Any person may be elected senator who at the time of election has attained the age of 25 years or is actually a resident within the district and qualified to vote for members of the general assembly according to this Constitution." Any person may be elected a member of the house who at the time of election has attained the age of 21 and is actually a resident in the county, city, town or election district, and qualified to vote for members of the general assembly according to the Constitution. The qualification to vote for members of the general assembly according to the Constitution requires a residence of two years in the State and twelve months in the county, city or town where he offers to vote. I move, Mr. President, we pass by the ninth section for the present to allow us to think a little more closely on these matters.

MR. CALDWELL. Before any action is taken on that motion, sir, I call the attention to the chairman of the committee to the phraseology of the latter part of this section. This matter, sir, was before the Committee on the Executive Department and it occurred to myself as well as other members of that committee that in view of the fact that the State of West Virginia is not in existence as yet, sir, and will not be until we are recognized by Congress and that the date of our existence will commence then, that no one will be eligible to these several offices until five years after the expiration of that period. Now, sir, to obviate this difficulty the Committee on the Executive Department used something like this "who have been citizens of any of the counties forming a part of this State five years next preceding or at the time of the adoption of the Constitution."

MR. VAN WINKLE. There's a word or two left out. It might read: "Who have been citizens of the State for five years next preceding or were so at the time of the adoption of the Constitution." The Convention will introduce those words by general consent, I suppose.

MR. POMEROY. I hope the motion will prevail that we will pass by. I hope we will just pass by for the present. When this matter comes up I would like to say something.

The motion to pass by the ninth section for the present was agreed to.

The Secretary reported section ten as follows:

Sec. 10. Every person elected or appointed to any office or trust, civil or military, shall, before proceeding to exercise the authority or discharge the duties of the same, make oath or affirmation that he will support the Constitution of the United States and the Constitution of this State; and every citizen of this State may in time of war, insurrection and public danger, be required by law to make oath or affirmation, upon pain of suspension of his right of voting and holding office under this Constitution.

MR. VAN WINKLE. I would suggest a division of the question on the first and second clauses of this. From the beginning down to the word "State" where it occurs in the fifth line is the old provision. The latter part is a new provision and may induce some discussion. I ask that the vote may be taken on the first clause, and I presume there will be no objection, and then on the second.

MR. HERVEY. I move to add to the words "To support the Constitution of the United States and of this State" the oath of office required.

MR. VAN WINKLE. That will be required, I suppose, by the legislature. I do not know that it is necessary here. It can be put in though. If it is not, I apprehend it would not preclude the legislature from requiring that oath. I do not think the Constitution is exactly the place for that. I make no objection to it, however, if gentlemen insist on it. It is better as it is. This is providing what is considered as a fundamental thing. It is to require this oath to the Constitution of the United States as well as to the State. By the very terms of the Constitution of the United States all state officers are bound by it; and although we have had these repeated examples of perjury by men in high places in violating that official oath, yet I think it had better be retained. If gentlemen think there is anything here to prevent the legislature from prescribing the oath of fidelity, a clause had better be inserted. You might say "in addition to such oaths as shall be prescribed by law" or something of the kind. Yet I do not think it necessary.

MR. HERVEY. I have no particular desire to press my motion, but it would occupy but very little paper. I withdraw it.

The Chair put Mr. Van Winkle's motion to divide the question, and it was agreed to, and the first clause was thereupon adopted.

MR. VAN WINKLE. This second clause is a new one, and is particularly drawn from the necessities of the case as they seem to be existing around us. They are perhaps even at this time requiring this oath from the various officers, and some propositions I have seen there and in the previous convention have been making an ex post facto law. It is an extraordinary thing, it is true, for the legislature to require every citizen to take an oath of allegiance. It is done, no doubt, in other countries. It is a common thing in them under certain circumstances. But this does not propose to vest the legislature with power to make this a permanent law; but from our recent experience, it is believed there are circumstances when such a clause ought to be there. It entitles the legislature in time of war or insurrection and public danger only to require the like oath or affirmation to be taken by every citizen of the State. I apprehend if such a law had been enforced in the early part of this rebellion we would have been able to discriminate very soon between friends and enemies; and we would by the subsequent clause to which I shall advert presently have been able to reach them.

Now, sir, the penalty of disfranchisement—the deprivation of the most important rights of the citizen—is reserved for this grave offense. For certainly it is a grave offense to refuse when required by public authority in time of war to come and make an open profession before his God and his country of his allegiance to the State. It is punished by deprivation of the right of voting and holding office. So that a person who under those circumstances, whether a foreign or domestic enemy is on the soil, refuses to pledge himself in that solemn way to uphold the Constitution of the United States and of his own state, will be punished by this deprivation. It will have this effect. If he is in office, his office ceases instantly by the refusal. If he is out of office, he will not have the power to put a man there who is like himself. In such time, sir, the right of voting will be confined to those citizens who retain their allegiance to their country and to the State, which is a part of the country.

I therefore think, sir, that while this is a novel provision—And I am not aware that such a provision has been introduced into any of the states—yet that there are abundant reasons growing out of our recent experience commending this to us, because the necessity has shown itself, and which cannot be construed as invading private rights in any respect—cannot be construed as harsh or as requiring of a citizen more than his plain duty requires of him. Nor do I think that it can be considered that the punishment which is affixed to it is any too severe for the occasion. It is, sir, not upon the pain of having this right taken away from him forever; it is not that he is to find no place for repentance; it is not that he may have no benefit from returning to his allegiance, but upon pain of suspension of this right by law. The law will fix the time and circumstances during which it shall continue. In this form, sir, I think while the Convention will acknowledge that some such provision is highly necessary, they will acknowledge that under the circumstances it is intended to reach, this is certainly unobjectionable in itself.

MR. CALDWELL. I do not like the word "may," sir, in this section so well as the word "shall." What I mean, sir, is that those who offer to vote shall be required instead of using the word may be required.

MR. VAN WINKLE. It says that they may be required by law. The legislature is to judge of the necessity of putting this test. The law may be made as imperative that they shall as the legislature pleases. But it is not to be a standing provision. The legislature is to judge when the necessity for enforcing this provision arises.

While up, sir, I will just state what I have just had my attention called to. It reads "In time of war, insurrection and public danger." It should read "or" as in the following section.

MR. CALDWELL. I do not insist on the amendment.

The question was then taken on the second clause of the tenth section and it was adopted.

MR. VAN WINKLE. The next section, sir, is a sort of omnium gatherum and contains several provisions. But from the suggestions of several gentlemen I propose to move that they be referred back to the Committee with a view of extending it. It is thought that while the United States Constitution confers no other power but what is expressly granted, yet when legislative power is conferred here in a state constitution it carries the legislative power that is not expressly withheld. That has induced me to ask that this may be referred back to the committee in order that they may consider whether they will not report additional provisions, in which case it may have to be subdivided into other sections. I will therefore ask that the eleventh section may be referred back to the committee.

The motion was agreed to.

The Secretary reported section 12 as follows:

Sec. 12. The legislative, executive and judicial department of the government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with, or exercise the powers of more than one of them at the same time.

MR. VAN WINKLE. This, sir, is about what is in our Bill of Rights except that that says "ought." This is made imperative—made the rule.

Now, sir, notwithstanding we had it in the bill of rights and, I believe, in the constitution also but in that form that it never amounted to anything as a rule of government except to tell people it ought not to be so, the constitution itself provided for the exercise of all three of these powers by one set of officers. Justices of the peace while sitting as a county court were invested with all three, sir. They sat as a court of justice — which made them judiciary. They arranged the fiscal and other matters of the county—which made them legislative; and they directed many other matters connected with the county — which made them administrative. If not in fact executive. The principle is most certainly a good one. It is in the Constitution of the United States as a fundamental principle that the three ought to be kept distinct and adding that neither shall exercise the powers properly belonging to the others there shall be no encouragement of one to the detriment of another and no person shall be vested with the exercise of the powers of more than one at a time. That, sir, in plain language, means that a justice shall not be a member of the legislature. I think if he wants to go very bad he had better resign his justiceship. I mentioned that one case peculiarly legislative. That has been constantly the thing, that a man without resigning the judicial office may go and act in a legislative capacity. I think the rule is a good one and that it ought to be practically applied and carried out to the full extent. A man, therefore, who holds an office in the executive cannot at the same time hold one in the legislative department, nor can he act as justice or judge or prosecuting attorney. That is the intention of the committee; to keep these three departments of the government entirely distinct. Not merely to keep one department from exercising the powers of the other—a court from assuming executive functions, the legislature from attempting to encroach on the proper duties of the executive—but that no person who holds an office in one of these departments shall assume to hold an office in any other of these departments.

MR. CALDWELL. I only wish to remark that I altogether approve of this section, sir, its provisions; and I rise merely to observe that one of the committees of this body went so far as to deprive the lieutenant governor, the second officer in the executive department, of the privilege of presiding over the legislative body in the present Constitution of Virginia. Sir, he is made the presiding officer of the senate without the right even to vote. The Committee on the Executive Department thought he ought not even to be the presiding officer of that body and I have so reported to this Convention. It met with my views heartily. So every provision in this section does and I hope we will adopt it.

Well, sir, the point might as well be decided now as at any other time whether an executive officer shall be a component part of the legislature. Now, sir, it is very easy to provide that the senate shall elect a president and that in case of any difficulty with the governor that the president of the senate shall act as governor for the time being or where the necessity continues, or that in the death of the governor he shall become the governor. He ceases to be a legislative officer then and takes the place of governor.

I hope a vote on this section may be considered as an instruction to the executive committee on that head.

MR. CALDWELL. The committee have so reported.

MR. VAN WINKLE. I beg your pardon; I thought you had reported the other way. Well, sir, I am glad to hear it.

MR. STUART of Doddridge. The committee also reported to recommend the election of a lieutenant governor.

MR. CALDWELL. To do nothing until the governor dies (Laughter).

The question was taken on the 12th section and it was agreed to.

Section 13 was reported by the Secretary as follows:

Sec. 13. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. Every attempt to justify and uphold an armed invasion of the State, or an organized insurrection within the limits thereof, by publicly speaking, writing or printing, or the publishing or circulating of any such writing or printing during the continuance of such invasion or insurrection, shall be deemed an adhering to the enemies of the State. Treason shall be punished, according to the character of the acts committed, by the infliction of one or more of the penalties of death, imprisonment, fine or confiscation of real and personal property of the offenders, as may be prescribed by law.

MR. VAN WINKLE. Mr. President, I will ask here before I sit down that this section may be considered in clauses. The first is that "treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort." The second is "every attempt to justify and uphold an armed invasion of the State, or an organized insurrection within the limits thereof, by publicly speaking writing or printing, or the publishing or circulation of any such writing or printing, during the continuance of such invasion or insurrection, shall be deemed an adhering to the enemies of the State." Third, "treason shall be punished according to the character of the acts committed, by the infliction of one or more penalties of death, imprisonment, fine or confiscation of real and personal property of the offenders, as may be prescribed by law." The first defines the crime of treason, the second makes certain acts the proof of treason, and the third enables the punishment to be less than death.

There have been great doubts—and I think very good and well founded—whether there is such a thing as treason against a state. The United States Government undertakes the conduct of the war that is to be conducted in or on behalf of the states. States are not permitted by the Constitution of the United States to keep armies or ships of war in time of peace. The United States is bound to repel the invasion of any state, and is bound, upon proper application, to suppress any insurrection arising within any state. There is a qualification that application shall be made, but I shall only construe that as being to prevent the necessity of the United States forces being called forth on trivial occasions. It is very hard perhaps at some times to distinguish between a mere riot and an insurrection within its borders; but whenever a state notifies the general government in a proper way that there is an insurrection within its borders, then the United States Government is bound to send and suppress that insurrection. It is true it may use the state militia, but then it is put under control of the United States Government in time of war. Now, who can be enemies of the State, therefore, unless they are at the same time enemies of the United States? And if enemies of the United States, then the act of treason is an offense not against the state but against the United States. The first official recognition of this restored government was an application to the President on the information that the state was in a state of insurrection, and was a call on the United States Government for aid in those respects. The reply was almost immediate from the War Department that that aid would be furnished. That was the first formal recognition of the restored government. The documents accompany the governor's message. We hold, sir, from the first that all expenses incurred by this restored government or by the government of any of the loyal states in suppressing this rebellion, in defending even their own territory against the rebels or the insurrectionists—every dollar of expense that may be incurred in that way must be reimbursed to the state by the general government—and upon this very principle: that the war was the war of the general government. It was only the war of the states so far as they were part of the United States, and being their war they must be liable for the expenses. If this is correct, sir, then the other conclusion follows, of course, that treason can only be committed against the United States. There is not and has not been in the Constitution of Virginia any such clause. There is a statute, however, which defines treason in this way and makes other acts, for instance the setting up of another government treason against the State. I am not, sir, not anicipating that this question would arise here this evening, as fully prepared to give my views on it as I might have been, but I think I have given the leading principles which must govern in this discussion. I have conferred with legal gentlemen outside of the Convention on the subject, and I believe they are of the same opinion. I think a similar decision has been made by the Supreme Court of the United States although I have not recently seen the decision itself nor cannot say precisely how far it goes. But I should like, of course, to hear from any gentleman who is familiar with the subject or can throw any light on it. I am sorry the member from Monongalia has been compelled to leave us. I had some conversation with him on the subject and I think he was very clear that there could be no treason against a state of this nation.

MR. LAMB. It does seem to me, I must confess, that it is entirely unnecessary for us to put any provision on this subject in the constitution of the state. I believe there is no provision on the subject of treason in the present constitution of the state. There is no provision in the constitution of the state on the subject of murder. Yet it does not prevent the legislature from enacting proper laws to prevent that offense. Why not leave this on the same footing as other crimes?

MR. BROWN of Kanawha. I acknowledge, sir, I must differ in toto with the gentleman from Wood in regard to the doctrine he lays down, that no treason can exist against the state. Wherever allegiance is owed, there the obligation of protection is a correlative and wherever the two exist, treason is the result. Treason is that violation of a man's allegiance to the country that he owes it to; and to the extent of the powers reserved by the states a man's obligations of obedience are as complete and perfect as they were before to the entire powers that the state had before any Confederation or United States was ever formed; and the states now forming the general government of the United States only conceded such powers as are delegated expressly in the Constitution, and it is expressly declared in that same Constitution, to preclude a contrary conclusion, that all the powers not delegated are expressly reserved to the states and the people. Every power, therefore, that is reserved—and that is a great residuum of power not delegated—is perfect and complete. There is nothing wanting in it; but to the extent of those reserved powers every citizen owes his allegiance direct and perfect to the state. To that extent he can commit treason; and it is as perfect an offense against the state as against the United States wherever the individual violates the obligations he owes to the United States where the powers have been delegated. Why, sir, I owe no allegiance to the United States beyond the powers delegated. The government of the United States is a perfect government within its prescribed limits. Outside of them I owe it no obedience. None whatever. Outside of those limits all my allegiance is to the State. The whole powers of sovereignty in this government, in this country, are carved out and distinct.

To the general government is conceded one part; to the State the other part; and it requires the two to make it complete. A citizen owes a divided and double allegiance; and it is never in conflict as long as these two governments keep within their prescribed boundaries. It is only when one undertakes to invade the rights of the other that there can be a conflict, and then it is that this question arises. And this question is not a one-sided one in Virginia. Why, sir, in the case of John Brown, at Harper's Ferry, they were indicted for treason against the State of Virginia, and convicted for it and sentenced for the same; and they were executed for the same; but as Governor Wise said to the President, when Virginia was done with them the United States could have the residue for any treason against the United States. It is a decided question; so far as I am aware, an undisputed question. I have never before heard it raised or mooted. Our statute books from the beginning of the commonwealth have defined and declared what treason against the state was, and the language used is the same that is used in the laws of the United States and in the Constitution of the United States: that treason against the state shall consist in levying war and giving aid and comfort to its enemies, and treason against the United States is levying war against the United States and giving aid and comfort to their enemies.

Well, sir, I differ with the gentleman in another particular materially: that whenever an insurrection arises in a state that it is an insurrection against the United States and that the United States can assume upon itself to put it down without first being called upon by the state government. I deny in toto any such proposition. I maintain within the borders of the state the jurisdiction of the state when a local insurrection arises within that border it is against the state government not against the United States Government. Mark you, against the state government. The United States has no right to enter the territory with her army or interfere with the local regulations of the state until, as prescribed in the Constitution of the United States, the governor or the legislature of the state calls upon the President to aid us; and whenever that is done then the Constitution makes it obligatory on the President to render the aid that is required, and that is one of the guaranties to secure every state for its protection against this insurrection. So that the entry of the general government to interfere with the state concerns is no part of its duty. It is a violation of the Constitution. We have provided against any such encroachment. The state manages its own affairs; and because the general government has no authority for interference is one of the reasons why the state has a right to claim the allegiance and obedience of the citizens, and if he refuses to render it, he commits treason against the state.

Again the gentleman alludes to some decision of the Supreme Court of the United States. I confess I am aware of none, and I think the gentleman is mistaken. I think he will find that the Supreme Court have never uttered any sentiment of the kind—that no decision of the kind has ever been made. If it has it is new to me. I have neither heard of it through the press nor have the law books reported it. I confess I do not feel the necessity of including this clause in the Constitution, for I believe all this is legitimate action for the legislature; and as the legislature of a state, unless prohibited has all power delegated to it to do as it pleases, that this would be fully within the purview of legislation, and heretofore it has been in our state the subject of legislation. I hold it is wholly immaterial whether it be in the Constitution or submitted to the legislature. Here it defines and describes, and it is as well done here as there. It is not so easily altered. That is the only objection, I conceive that could be taken to it.

MR. VAN WINKLE. The authority I refer to is Story's Commentaries. I have sir, a little book here which has a few words on this subject which I would like to read to the Convention, confirming, to some extent at any rate, the remarks I have made.

Mr. Van Winkle then read from a Constitutional Manual, which he held in his hand, which referred to 1 Story's Commentaries 171, and regretted that he had not at hand the authority cited:

> "A State cannot take cognizance of or punish the crime of treason against the United States. As treason is a crime whose object is to overthrow the government, and the government of the State is guaranteed by that of the United States, it follows, there can be no treason against a State which is not also treason against the United States, and consequently the crime of treason cannot be punished by the States."

MR. VAN WINKLE. Of course, there can be no doubt of that. That I presume is not a question that is mooted anywhere.

MR. PARKER. What authority is that?

MR. VAN WINKLE. I do not offer the book as authority. It is only argumentation. It refers to Story as authority for that much; that a state cannot punish treason against the United States, and I think it is very obvious that it cannot, and I presume that is granted without any difficulty. Well, it then goes on to say—and there I certainly coincide with it, and it was what I was endeavoring to illustrate to the Convention in my former remarks —that anything in the nature of opposition to a state—in the nature of levying war against a state, is at the same time levying war against the United States and is therefore treason against the United States, and if treason cannot be punished by a state, the state cannot justly punish that treason which is even committed against itself or that treason which consists in levying war against itself. If the principle is a good one that no state can punish treason against the United States then although that treason consisted in levying war against the state itself, it is still precluded from the right to punish it. I cannot take the John Brown case as much authority, especially if accompanied with that declaration of Gov. Wise, that when the state was done with John Brown and his confederates the general government could have what was left of them. I should think, sir, it was only the first act of rebellion. I do not know how it happened that the United States officers did not claim jurisdiction in that case. But I cannot think the case as tried before the circuit court there decides anything in reference to the matter in question.

MR. BROWN of Kanawha. The gentleman, perhaps, has but little regard for the authorities of Virginia, as I should infer from the last remark he made, and may have a good deal for Judge Story or the book from which he reads. Surely the remarks of Gov. Wise could not affect the validity of a judicial decision.

MR. VAN WINKLE. I say that the language in which that remark was couched, and the spirit in which it was conceived, indicated a rebellious spirit against the United States, and the whole transaction might be in the same spirit. They claimed a right to punish where they had no right.

MR. BROWN of Kanawha. I must deny that. That is begging the question. The question here was whether treason could be committed against a state. That was a matter to be decided. That was decided by a judicial tribunal, the proper one the law had referred the case to; and, sir, the ablest counsel in the country were there. The most learned lawyers came there to test this very question. Every question that could be made in it, almost, and many more, were made. I recollect Mr. Cushing took a very active part in the discussion of that question in public assemblies; and I believe the attorney general was very strenuous that if anything wrong was done to that man the power of the nation should be brought to his rescue, but that everything was legitimate; and it was carried to the Court of Appeals of Virginia and they refused a supersedeas to it. And could it be supposed, if it were the plan, an easy matter that a man and his Confederates were taken up and tried for a crime they never committed, and they all citizens of other states anxious to secure his release and all the anxieties of a great Nation anxious to relieve him if he were not guilty, and the Supreme Court of the United States ready to issue its mandamus? And would it be possible that these men would be allowed under this plain state of the case to be tried and sentenced to hang for an offense that could not be committed? The authority cited by the gentleman is a mere ratiocination of some writer whom I know not, and for whom—without any disrespect to the gentleman or his book—I care less. Ratiocination upon this fact that the

United States Government guarantees to every state the state government. That is a misconstruction. The guaranty is not in a state government. The Constitution of the United States guarantees a republican form of government.

MR. VAN WINKLE. The gentleman is misquoting me. The authority is merely as to the fact that the state cannot punish treason against the United States.

MR. BROWN of Kanawha. Very well, sir, there is no question that a state government cannot undertake to exclude the laws of the United States. The United States is a perfect government of itself, and that was the very object of its creation. It is a distinguishing feature of the old Confederacy that it executes its own mandates on the citizens; and we are citizens and therefore liable to obey its orders. And it depends not on the state government and it cannot therefore try and convict a man under a law the state government did not pass and under an offense that is due to another government.

But the question is, can treason be committed against the state? We know that treason exists against the state and it is everywhere recognized and understood that the state cannot exclude the laws of the United States; but the question is, cannot a state declare what is treason against itself? And try and execute a citizen for disobedience to its mandates and violation of that allegiance? I show the authorities are that they can do it. The reason is because treason is that violation of the obligation which the citizen owes to the sovereignty to the extent of the powers that that sovereignty has a right to claim his obedience. If the state, therefore, has the power to demand my obedience and I refuse to obey, it can punish me; and if I seek to break down the government that makes its laws, it is treason against the government. And the government of the United States, in guaranteeing to the states a republican form of government, does not guarantee to the state, therefore, the government that is in it now and does not undertake to assume to set its foot in the borders of Virginia until it is called on. Why, sir, in the very case of John Brown, Gov. Wise complained of President Buchanan because he did not send the army there to put him down. What was his reply? Why, sir, if you show that there is an insurrection in Virginia, and you want the army of the United States, you shall have them in 20 minutes. But until you call for them, I cannot send them to put down insurrection against the government that you do not require. He sent the Marines there to take care of the arsenal and to assist the marshal in the execution of his duties at Harper's Ferry, but never sent any armies into the state until the governor calls for them or the legislature requires it. There can be no question about the fact to my mind of the existence of treason against the state.

MR. VAN WINKLE. I desire to ask the gentleman a question and that is, whether, in his opinion, the government of the United States could have punished John Brown?

MR. BROWN of Kanawha. I have no doubt about it.

MR. VAN WINKLE. If they could, then it was treason against the United States. And if it is treason against the United States, my point is simply that the state cannot punish him.

MR. LAMB. Mr. President, I do not want, for one, in this Convention, to undertake to decide grave legal questions between the two gentlemen. If we do our authority may get into the books; and I want more light on it before I, for one, undertake to give an opinion on that subject. However, we can get rid of the difficulty very easy. My friend from Wood argues that it is doubtful at least whether the state can punish treason, because treason against the state must be necessarily treason against the United States. Hence this state of the case: it is certainly improper to insert this provision into the Constitution. The gentleman from Kanawha argues, on the contrary, that the state has unquestionably the right to punish treason against herself, but he tells us at the same time that is unnecessary to insert this provision in the Constitution. The State of Virginia has punished John Brown without a provision on the subject, and the legislature will have full authority to legislate on the subject, if a state can do it, without our putting anything in the Constitution about it just as much as it will have authority to legislate on the subject of any other crime. I have been looking at the constitutions of the different states. I have not, of course, been able to give them that thorough search which I ought to give in attempting to speak in reference to them; but I have not found, as yet, any constitution of a state that contains a provision similar to this except the Constitution of the State of Deleware. In the other states it is generally omitted; and I think it would be the much better course for us to take in this case.

I move to strike out section 13.

MR. PARKER. I am not very much prepared to speak on this question; but I must say it is the first time in my life that I ever heard it questioned by anybody, whether judicial, lawyers, judges, that treason could not be committed against a state government. I agree with the gentleman from Kanawha throughout. I supposed it a fact just as perfectly settled in this country that treason could be committed against a state government as the fact was established that state governments exist. Government is government. A state government has the allegiance of its citizens. Every government has the allegiance of its citizens or it is no government at all. Wherever allegiance exists, a violation of that allegiance is treason. No doubt of it. I never heard it questioned in any state of this Union.

MR. VAN WINKLE. I was only quoting what Judge Story says about it.

MR. PARKER. Judge Story says that treason against one government cannot be punished by another government. Well, I suppose that is very clear. I do not suppose any of us want to argue that question. The government that is assaulted and injured is the government that punishes. What has that to do with this question? The question is here simply, under our system of government can treason by its citizens be committed against a state government? I say if we deem that such a thing as a state government exists, then we admit that treason is capable of being committed against it. Admit the one, the other goes with it. Government is protection on the one side, duty and allegiance on the other. As I understand the theory of our government in the people, from the people all power originally arises and in them is vested. I am a part of the Constitution of Virginia. They have made the government of Virginia. As an American citizen, I am also a part of that great constituency which has erected the Federal government. Therefore, I am a citizen of two governments. They are both amenable to me. The people are the source of power for them both. Both governments spring from the people and rest upon them. The people have invested the one government with certain powers and called them agencies, if you choose. They are our agents. They have that in common. The people of Virginia, in common with the rest of the people of the United States, have conferred certain powers—we will describe them as limited—upon the Federal Government. Now, so far as we have clothed these two governments with power, we owe allegiance to those two governments so long as they keep within limit of those powers which we have delegated. We are amenable to them. If the two powers should come in conflict of course the state power gives way to the Federal power, for that is the supreme law of the land. That is the point. Where they come in conflict, then the state law gives way to the Federal law, and we cannot violate them both because the state law being in conflict with the Federal law it is a nullity. We do not break it. But there is ample field for the state legislation outside of Federal legislation. If we violate our allegiance to the state where it is legitimate allegiance, why, then, it is treason to the state. The Federal Government has nothing to do with it—nothing unless the act that we do violates our allegiance to the Federal Government acting within its legitimate and prescribed powers. If it is without those powers, we have nothing to do with it. It is an agent without any authority the power the people have not granted to these governments is still reserved and we hold ourselves. What we have given to the Federal Government is the supreme law of the land. If we violate that, then to that government we are alone amenable. If outside of those powers, we violate our duty and the powers we have put upon the state agent, failing in our allegiance to that, in case of rebellion or resistance to the execution of a state law—suppose a state court of equity in and chancery should issue an injunction to deliver up such and such property, and force should meet the power, the officer, that was executing it, why that would be a resistance to lawful authority; it would be rebellion; if carried out, it would be treason. Suppose it is to put A. B. in the possession of a piece of land, that does not touch any power—

MR. LAMB. I would suggest to the gentleman that he addresses his remarks to the President, as he should under our rule. I don't know whether he is speaking at me or the gentleman from Wood (Laughter).

MR. PARKER Thank you. Therefore, in that case—I thank the gentleman from Ohio; I thank him again—(Laughter)—the resistance to that officer when executing a state law, Mr. President, would be rebellion; if the resistance was large, covering a sufficient force, it would raise itself into treason—not treason against the Federal Government, for it has not violated a law of the Federal Government, but against the State of Virginia. By the Federal Constitution, the State of Virginia has a right to call upon the Federal Government to come and help her put down that rebellion. The Federal Government acts not that it is struck or wounded or touched but because in fulfillment of an obligation she is under to every state she is bound to come in and help them when called on. Just as President Buchanan said to Governor Wise: When you call for me, I will send forces. Through every state in this Union, in its constitution and statute books, you will find treason against the state; and treason being a fact, I want it in the Constitution. Treason has now become a common and very troublesome matter; and so far as I am concerned, I want to see it put in the Constitution, not leave it to the legislature. In regard to the terms which I would like, I thought it was very well expressed. The chairman of the committee expressed it except one word "adhere" there. It should be "adhering," giving aid and comfort; for adhering to the enemy merely mentally, without some overt act, without giving aid and comfort, does not constitute treason in this country.

MR. HALL of Marion. I feel very anxious to see some provision in regard to this matter engrafted in the Constitution; and this is a question that considering the hour tonight and the time it has been under consideration in this body, I apprehend we might all profit by sleeping on it till morning. I have an opinion on it; I am ready to act on it; I have thought of it; and I have a decided opinion that I shall not trouble the Convention with any remarks; now in consequence of the hour. I do not know that I shall in the morning. But I move we adjourn.

The motion was agreed to and the Convention adjourned.

XVI. SATURDAY, DECEMBER 14, 1861.

The Convention met at the appointed hour and was opened with prayer by Reverend Gordon Battelle, a member from Ohio county.

The minutes of the preceding day were read and approved.

MR. BATTELLE. Mr. President, I hold in my hand a proposition which I wish to submit to the Convention, with the request that it be read, laid on the table, printed and referred to the Committee on General and Fundamental Provisions.

The following is the proposition presented by Mr. Battelle, which was ordered to be disposed of as requested.

1. No slave shall be brought into this State for permanent residence, after the adoption of this Constitution.

2. The legislature shall have full power to make such just and humane provisions as may be needful for the better regulation and

security of the marriage and family relatives between slaves; for their proper instruction; and for the gradual and equitable removal of slavery from the State.

3. On and after the 4th day of July, eighteen hundred and slavery or involuntary servitude, except for crime, shall cease within the limits of this State.

MR. BROWN of Preston. I offer a resolution, which I desire to have referred. The resolution, which was referred, is as follows:

RESOLVED, That the Committee on the Schedule be instructed to enquire into the expediency of making provision for the per diem and mileage of the members of the General Assembly of West Virginia, at its first session under the new Constitution.

THE PRESIDENT. When the Convention adjourned it had under consideration the 13th section of the report of the Committee on Fundamental and General Provisions.

MR. HERVEY. I move that when this Convention adjourns at half past 12 o'clock it be to meet Monday morning at ten o'clock.

THE PRESIDENT. The Chair would remark to the gentleman that it is meeting now at ten o'clock.

MR. HERVEY. It is to avoid the afternoon session.

MR. VAN WINKLE. The object of the gentleman is simply that there be no afternoon session held today.

THE PRESIDENT. I understand it now. The question is on the adoption of the motion of the gentleman from Brooke.

The motion was agreed to.

MR. PARKER. I have a few authorities which I would submit now.

THE PRESIDENT. The Chair was going to state the question. It is on the motion to strike out the whole section.

MR. PARKER. I had not the authorities at hand in the remarks which I made last night, and I propose to submit a few now and the gentlemen on the other side can have a chance to answer.

* * * * *

Mr. Parker afterwards furnished to the reporter the following paper, embodying his views on treason against a state, with the authorities on which he relied:

In our peculiar system of government can treason be committed against a state?

To determine this question, we should look to the origin of our system, the source of power and the distribution which the people have made of this power.

Previous to the separation of the thirteen colonies from Great Britain by the establishment of their independence, these colonies owed allegiance to the Crown of Great Britain. By the establishment of that independence this allegiance was dissolved and the power became vested in the people of the several colonies. Each of these colonies formed for itself a state government. Virginia formed hers in 1776 and other colonies theirs soon after. These 13 peoples became then 13 independent state governments in 1777 or 1778, during the war, these 13 independent state governments entered into a league or compact called "Articles of Confederation." The powers of this confederation were vested in a Congress, solely composed of delegates elected by the legislatures of the states. There was no executive, no judicial department then; no president nor Federal courts nor marshals then. The Congress could enact laws but had no co-ordinate branches to expound and carry its laws into execution. It could only *recommend* to the 13 state governments, asking them to carry its laws into execution. The state governments, as a general thing did this, whilst pressed by the arms of Great Britain. But when this outside pressure was removed by the Peace of 1783, they ceased to comply with the request of Congress. No money could be raised to pay the debts created by the war, and its laws were set at defiance. Rivalries and disputes were springing up between the several states in relation to commerce, imposts and the like; and the whole fruits of the great struggle were threatened with immediate ruin. Amid these stern necessities it was in 1787 the delegates chosen generally, I think, by the legislatures of the several states, with George Washington at their head, met in Philadelphia and drafted the Federal Constitution. It begins "We the people of the United States, in order to form a more perfect Union, etc.," Art. 6th, Sec. reads thus:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Article 9 (Amendment) reads thus:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others held by the people."

Article 10 (Amendment)

"The powers not delegated to the United States by this Constitution nor prohibited by it to the States, *are reserved to the States respectively or to the people.*"

Article 7th, Sec. 4th:

"The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence."

This Constitution was submitted to the people convened through their delegates in each state, who ratified the same and thereby became consolidated into one people and government to the extent of the powers granted in that constitution, *but no further.* The powers reserved respectively to the states and the people remained in the respective states and in the people the same as before the adoption of the Constitution of the United States. Before the adoption of that Constitution, each state was sovereign and supreme, and the adoption of that instrument by the people only abridged that state sovereignty to the extent of the sovereignty expressly transferred to the Federal Government by the Federal Constitution. Now, that residuum of sovereignty which remained in the states after the people had resumed sufficient to construct the Federal Government, is the sovereign power to which the people owe an allegiance separate and distinct from their allegiance to the Federal Government to the extent of its powers; and against this residuum of state sovereignty treason may be committed. The state is as sovereign and supreme outside the bounds of the Federal powers as it ever was.

As seen through the Federal Government, the people of the 34 states are but one people, making one great nation; and the powers conferred upon the Federal Government were with this view. It has the exclusive management of our intercourse with foreign nations with the outside world and with such internal interests as are general and require uniformity, as the post office department, internal commerce, etc. Coextensive with the constitutional exercise of its delegated powers, the Federal Government is supreme; and if the due exercise of its powers is obstructed anywhere *in any* *state,* it has the unquestionable right to march its armies and remove the obstructions without any invasion or infraction of the rights of the state; for it is an exercise of its constitutional rights only but if it transcends the powers granted, it is an invasion and aggression upon the rights reserved to the states or people. To the states and people are reserved all powers of a local nature, to be exercised as the people and peculiar wants of each state shall require. Here the rights of persons and the rights of property are mainly defined and protected, with the modes of acquiring and disposing of property. In these local matters the state is sovereign and supreme. If a murder should be committed in the county of Ohio today by killing one of its citizens, the Federal Government would have no jurisdiction in the case, no more than the queen's bench of England. The indictment would conclude against the peace and dignity of the Commonwealth of Virginia; and in case the culprit should be convicted and sentenced to be executed, and 10, 20 or 100 citizens owing allegiance to the commonwealth should organize and arm themselves for the avowed purpose of rescuing the culprit, it would be levying war against the lawful authority of the state and treason against that authority. Any resistance to lawful authority (according to Noah Webster) is rebellion; but it requires *organized* and *armed* resistance to lawful authority, or the actual organizing and arming with intent to such resistance, to constitute the levying of war within the meaning of the Constitution. It is not necessary that the armed conspirators should contemplate at the time the upturning of the entire government, for their example if generally acted upon would soon destroy it by piece-meal. This does not invade any right of the Federal Government; nor does it immediately affect the state in the discharge of its duties to that government. But if upon requisition from the proper state authority, the Federal Government should interpose to assist the state government and should meet with this organized and armed resistance it would then become treason against both governments as it would be an organized and armed resistance to the lawful authority of both; and whether in each case the offense against the state would become merged in that against the United States is a question not now necessary to be discussed.

We are citizens of and owe allegiance to two governments, the Federal and the state, each equally original and springing from and resting on the people; each is self-acting and supreme within the scope of the powers granted by the Federal or state constitution. The constituency of the Federal Government are the citizens of the 34 states. The constituency of the state government are the citizens of the state. The Federal Government is the supreme law of the land; and wherever there is a conflict the state must yield to the Federal power. To decide the question of conflict that may arise in the last resort, is the province of the Supreme Court of the United States, which represents *all* the citizens of those states. This is the keystone of the arch, without which the whole must sink into anarchy. It *is* a system that seems to have generated and produced by the circumstances that surrounded and its great founders, who were but fit instruments in a divine hand.

Among the authorities produced were the following: United States Constitution Art. 4, S. 2; Mass. R. S. Ch. 123. Sec. 1; N. Y. R. S. Vol. 2, p. 656; Act passed by the Legislature of Pa., 11th of Feb. 1779, Sec. 3; Also Act 1829, Sec. 3, R. C. of Va., Ch. 162, Secs. 1, 2, 3, declaring what acts shall constitute treason against these states and prescribing the penalties. He then read from the opinions of Judge Tucker, of Va., 4 Tucker's Blackstone, app. p. 22; Judge King, of Pa.; in the case of the Kensington riots. The Supreme Court of N. Y. in the case of Lynch, and the opinion of the Supreme Court of Rhode Island, in the case of that state against Dorr, for treason in 1842, in which case Dorr was convicted.

The point was distinctly made in Dorr's defence; and, in deciding it, the court said: "Treason against the state and treason against the United States are to be distinguished; the one from the other, by the immediate objects and designs of the conspirators. If the blow be aimed only at the internal and municipal regulations or institutions of the state, without any design to disturb it in the discharge of any of its functions under the Constitution of the United States, it is treason against the state only—though, if the object be to prevent it from discharging those functions, as the election of senators, or electors of presidents, and the like, it becomes treason against the United States. The power to provide for the punishment of this crime, the legislature derives not from the United States or the people thereof, but from our own people, from the organized sovereign people of the state."

He also referred to the Shay rebellion in Massachusetts, soon after the revolutionary war, where sixteen persons were convicted of treason against the state. He also read from Wharton, Am. Criminal Law, page 582, title: Treason; and the cases there referred to.

* * * * *

During the reading of the concluding extracts from these authorities.

Mr. Van Winkle (Interrupting). I must call the gentleman to order. He is entirely out of order. What he is reading is all aside from the question. Those things cannot be read without special leave of the house. But to sit here—I make the point of order.

MR. PARKER. Mine is something more than a grammar of the—

THE PRESIDENT. The point of order is raised. The Chair—

MR. PARKER. A moment. The question as I understand now before the Convention is whether treason can be committed against a state.

MR. VAN WINKLE. The question now is, whether the gentleman is in order.

MR. PARKER. That is the question raised by the chairman making that report: can treason be committed against a state?

MR. VAN WINKLE. No, sir; I don't make that question.

THE PRESIDENT. The gentleman from Cabell will take his seat. The point of order has been raised here. The Chair was very well aware he was giving the gentleman from Cabell a very wide latitude in reading, but was expecting every moment that it would terminate and disposed to be as liberal as possible and permitted the reading to go on until he was satisfied it had been too extended, and the Chair thinks the point of order raised by the gentleman from Wood ought to be sustained and so decides this question. The gentleman will, of course, have a right to appeal from the decision of the Chair, or can resume the floor if he does not choose to appeal and argue the case not with the extent of reading which he has drawn into this debate.

The question is alone upon striking out the 13th section, which covers the whole ground of treason, and the Chair would distinctly urge the members to apply closely to the question at issue. The gentleman would have the election of taking an appeal from the decision of the Chair or resuming the floor and confining himself.

MR. VAN WINKLE. The floor belonged to the gentleman from Marion, and the gentleman from Cabell had leave to read, so that the gentleman cannot resume the floor for the purpose of discussing the merits of this question. The floor belonged to the gentleman from Marion.

MR. PARKER. If the gentleman from Marion claims the floor, I did not so understand it. I yield it. I would not have occupied it a moment if I supposed it had been so.

THE PRESIDENT. The gentleman from Marion did not claim the floor.

MR. HALL of Marion. I was entitled to the floor, but was not disposed to deprive any gentleman who desired to speak on this question. As I intimated last night, whilst I had an opinion on this question, it was not my purpose to occupy the time of the Convention by arguing the legal question before us but to make a single suggestion which conceived would be a sufficient reason for our proceeding with the case and refusing to strike out. I will state my view on that question in brief. Do not design to occupy the time of the Convention by any argument.

Whilst it is the opinion of the gentleman from Wood, whose legal opinions have and will have weight everywhere, that the offence of treason cannot be committed against a state, we do know that whatever the fact may be that opinion is not an original idea with the gentleman but has been understood and insisted upon by some of the very best legal talent we have had anywhere, whilst equally able legal men have held the opposite opinion; so that I do not believe that this is a question that is all on one side or new to any man who has been led to investigate the legal questions or quibbles in question. But it occurs to me that on this question we need not investigate with a view to ascertain whether treason can or cannot be committed against a state, but it is eminently proper—and does seem absolutely necessary—that we have some provision either in the Constitution or by legislative enactment to punish certain offences against the state. Whether we call this offence treason, believing that treason may be committed against the state, or whether we call it insurrection, that is really the difference between the parties holding the different opinions. One party insists on calling that offence treason which the other insists is only insurrection. Now, whether we call it one name or the other, I conceive it is important that we have some provision to punish offences against the State either in the Constitution or by legislative enactment. I, like some gentleman, who spoke on this question last evening, am in favor of having some provision in the Constitution, and for this reason, as remarked by the gentleman from Monongalia, in stating a matter, I shall urge on this body the broad of the very character of the offence we call treason—or insurrection, if you please to so call it. The very character of the offence is such that we are called on to act upon it at times and under circumstances that have really disqualified the public mind and public journals from acting calmly, cooly and justly and with discretion on these matters. The public mind when offences of this sort are committed or exist is almost invariably—and inevitably so—excited. Legislative bodies and courts of justice are very likely to be carried away with the exciting scenes that surround them and will be led to hasty, injudicious and improper action. Thus I think there is propriety in fixing some limit, in prescribing some rule of action and in defining in the Constitution, the organic law, something with reference to this offence that shall control for the time during excitement both legislative and judicial tribunals. Thus it is that I am opposed to striking out. I think we admit—I am decidedly of the opinion of the gentleman from Kanawha and other gentlemen who have spoken on this question—that treason can be committed against the state. If we describe the offence and what shall be the punishment of that, we shall have accomplished the very object that it is necessary we should do in this Constitution.

MR. VAN WINKLE. I said a while ago that the point stated by me was not that stated by the gentleman from Cabell. The point I made is that the treason described in the Constitution of the United States cannot be committed against the state—that is levying war; not that a state cannot call a riot treason and punish it.

MR. HALL of Marion. There is no doubt of that position, and that where the offence does come within the character and description of the offence described, that would make it an offence against the United States and we as a state have nothing to do with it. I understand the gentleman from Wood also takes that position and I am satisfied there can be no dispute on this question. I only design to suggest, without entering into argument, the propriety of our proceeding and calling and defining the offence, say by whatever name the Convention see fit. Call it—and it is perfectly competent that we may call it—treason. We may give it any name we like. And when we define a certain offence and say that offence shall be known as treason against the state and punished as prescribed, then it is treason. We have made it so, although it cannot be of the same character and description as that defined by the government of the United States thus it is unnecessary to argue the question of names. In that of itself there is nothing which should occupy our time.

I therefore am opposed to striking out because that would preclude us, as I understand, unless there are amendments to be offered, from prescribing the penalty and defining the offence that we design and which should be prescribed in the Constitution.

MR. BROWN of Kanawha. Mr. President, if I understood the remark of the gentleman from Wood a moment ago, he had rather abandoned the ground he assumed yesterday.

MR. HALL of Marion. I wish to make a suggestion. I do not claim to be any more quiet than the rest, but I propose we form ourselves into a Committee of the Whole and that we keep our feet more quiet so we can hear—into a Committee of the Whole to be quiet.

MR. BROWN of Kanawha. The proposition now is, to insert in the Constitution a provision declaring what shall be treason against the state. We are not here to deal with treason against the United States, to alter, amend or reform the Constitution of the United States. That is an instrument established by pact. It is an instrument that cannot be violated or broken nor amended save in the way it itself prescribes—save by the powers that created it. That fact growing out of the very nature of its existence as a compact. We are determining what shall be treason against a state. If there can be no such thing as treason against a state, it would be idle, it would be actual stupidity, to put in a provision in the Constitution declaring what treason is against the state. Now, sir, I shall not attempt to repeat the argument I urged upon the house last evening.

The member from Kanawha being apparently about to read, the Chair interposed.

THE PRESIDENT. Before the gentleman from Kanawha came in the question was raised to what extent a member might read in the course of remarks to the Convention. I believe it is a very well established principle in all parliamentary rules that extensive reference may be made, authorities quoted and so on, but not read to any extent. Objection has been made here to lengthy reading this morning; and because the Chair was called upon to rule upon that objection in the gentleman's absence, he now mentions the fact just for his information.

MR. BROWN of Preston. I will endeavor to quote within the rule of the Chair. I will not trouble the house with reading any more than three lines from the code declaring that treason is:

"That treason shall consist only in making war against the State or adhering to its enemies."

That is the law that has stood on the Statute Book since the 9th Henning Statutes at Large, I believe. I do not know the number of years before the Revolution. And it has been the law ever since.

MR. PARKER. Seventy-six?

MR. BROWN of Kanawha. Yes, sir.

MR. PARKER. Ninth Henning cannot be a long time before seventy-six.

MR. BROWN of Kanawha. Is not it? Well, it is a very old statute.

I desire to read just two or three lines from the Constitution of the United States:

"A person charged in any State with treason, felony or other crime who shall flee from justice and apprehension in one State shall, on demand of the executive authority of the State from which he fled be delivered up to be returned to the State having jurisdiction of the crime."

Now, the gentleman from Wood reads us authority yesterday evening, citing Judge Story, that a state has no jurisdiction whatever over treason committed against the United States. Well, sir, here this Constitution provides that the governor of the state may demand from the governor of another state any individual charged with treason in this state where there is jurisdiction over that crime of treason. And he shall be delivered up by the Executive of the other state. There is a provision in the Constitution recognizing expressly that treason against a state may be committed over which the courts of that state have jurisdiction; and the testimony of his authority is that the courts have no jurisdiction over treason against the United States and to secure the right on the part of these states to have the party delivered up. Then we have the authority of the judges of our own State, the Constitution of the United States, the highest authority that can be reached, and the authority of Judge Story that you have no jurisdiction of treason against the United States to show that there is such a thing as treason against the state and that it is the only way you can punish men or preserve its integrity. Rob a government of the right to punish treason against itself, and you strike down the government. Take from the United States Government the right to punish traitors and you have nothing to do to tear it down. Take from the state government the same right and it is at the mercy of any one. It is the very life of the state government, is the right to demand the duty and allegiance of the citizens and compel by the punishment of death the performance of that duty.

Well, sir, when everything concurs so plainly in this case, we can have no hesitation about the fact of our right to put it in the Constitution. The only question is that of propriety.

If you undertake to carry out the letter and hang every man guilty of treason by open rebellion, or by giving aid and comfort to the enemy, you involve such masses of individuals in the one crime as make the law a dead letter. By this clause in the Constitution, we indicate that the legislature may discriminate between grades of this crime and provide punishments to correspond with these grades of the offence, and that you may mitigate it until it will be so abhorrent as that you will fail to execute it; and thereby you will secure a compulsion by many individuals in return to their allegiance that you could not otherwise have done. I say therefore it is a wise provision to be inserted in the Constitution as an indication to the legislature of its duty; for it is only in times that have engendered this new idea in regard to treason. Heretofore when a man started out as a traitor you crushed it at once and had simply to hang him up to deter others. No great injury was done, and that was suppressed. But now you have hundreds and thousands involved in the difficulty and to pass a law looking to the destruction of all is monstrous. It is right therefore that this very provision, while it maintains the right of the State to punish treason, to declare it an offence, also indicates the mode by which it may be mitigated to suit each case, and thus mitigate to a great extent the evils. Your legislature assemble and under the pressure of circumstances they run wild. But with that provision in the Constitution they are restrained and the way is pointed out; the distinctive features of the crime are given; and they will follow in that beaten track.

MR. VAN WINKLE. I do not know that I can add anything to what I said last evening on this subject; but I am satisfied that I either failed to make myself understood or the gentlemen are giving a much wider range to the question than there seems to be occasion for. Now, sir, we are not here sitting as a court of justice to interpret the law; we are not only making law but making fundamental law; and the question does not arise with us whether the states—every one of them, if you please—have in their Constitution or on their statute books laws for the punishment of treason. The question is whether they are properly there. And while we may admit our incompetence as gentlemen please to grapple with questions of that character, yet they are the identical questions which we have to meet. The opinions of learned jurists directly to the point would, of course, have great influence here. But the opinions of jurists who are discussing an entirely different question, or whose attention has not been drawn to the precise point mooted here, are of course of very little value. You may read from Mr. Wharton, whose book is a mere compilation, or you may read from other authorities or state constitution in this Union, but unless the laws in those books were put there with a direct view to the question that is agitated here, it cannot, of course, have much influence on our decision. The relative powers of the United States and the several states were not, it is very probable, understood so well at the time the Constitution was made as they are understood now. It is very evident that men in making that Constitution—as we shall find perhaps in making ours—had not comprehended, or could not at the moment comprehend, the vast ramifications in which everything of this kind runs. We are endeavoring, sir, of course, to provide for all possible cases that may arise under the Constitution we are making; but, sir, any man who flatters himself we shall attain that end would be claiming more for our human nature than human nature generally has been able to accomplish.

Now, sir, there have been long and elaborate arguments and decisions or opinions of courts delivered on various points arising between this supposed conflict of state and United States jurisdiction. It is, if I recollect right—and gentlemen must not hold me for the strict language of the law-books when I am quoting from memory—but there has been a decision which excited considerable argument and lengthy opinions that where a power is confined to the general government and it exercises that power the states are precluded. As for instance, a power is given to the United States to make a bankrupt law. The states make no bankrupt laws. Then if they were forbidden by no clause of the Constitution, the states might make one. Maryland had something in the nature of one; but it was found I believe to be contrary to another clause of the Constitution which forbids the impairment of the obligations of contracts. But it was this: that when the general government exercised any of the powers confided to it, the states must cease. I can remember the instance now, sir. It was in reference to citizenship. The United States Constitution provides that the government of the United States may make laws for the naturalization of foreigners. There is a law on the old statute book of Virginia which provides that a man coming into the State of Virginia and marrying a wife here possessed of property shall become a citizen of Virginia; but the decision is express that the United States having passed a law for the naturalization of foreigners, all state laws on the subject are abrogated. Now, I think that is the decision. Now, sir, I want to state this question as it appears to me. I have not, of course, a right to make questions for this Convention. I have this right, that when I have raised a question here and gentlemen respond to it, I have a right to state it correctly. I did state, when allowed by the kindness of the gentleman from Marion to interrupt him for a moment, that the State of Pennsylvania, if she chooses, may call a riot treason and punish it. The State of Pennsylvania, or any other state, may make even the counterfeiting one of her bonds treason. That is in derogation of the sovereign majesty of the state, and she may punish it. Well, sir, with that we have nothing to do. Here is the question. It has been stated by one of the first writers upon public law that the very worst kind of despotism is a law punishing treason and not defining what that treason shall be. It appears as early as the reign of Mary the English government had defined treason by a statute passed in that reign; and those very words had received their interpretation from time to time in England, when in seeking for a definition of treason the Convention who framed the Constitution of the United States took the words from that statute. They defined treason, but they put some restrictions on it by which it does not go so far as the statute in England. It is not allowed to work corruption of blood, and things of that kind. But they have declared—and we are proposing to declare the same thing—that treason shall consist only in levying war against the United States and in adhering to their enemies and giving them aid and comfort. That word "enemies" certainly implies armed enemies. It cannot mean that because some person abroad is inimical to the United States—that because some person abroad should have his sympathies drawn in favor of this so-called southern confederacy, a person administering to the want of such a person would be adhering to the enemies of the United States, giving them aid and comfort. So that I take it, although I do not speak now from recollection of authority but from the plain language there, that the whole clause refers to war, to armed enemies, to levying war against the United States and adhering to their enemies, giving them aid and comfort.

Now, sir, the question arises that I endeavored to lay before the Convention I should have stated last evening that the committee—although this appears under the head of their report—when the section was passed upon in committee, the views of the members of the committee were divergent, as they are here. But it was concluded that the best way was to report it to the Convention to state our views and let the Convention dispose of it.

The question is this: can the levying of war with the purpose of overthrowing the state government—for nothing else is treason than the overthrowing of a government—can this be treason against a state, or is it simply treason against the United States? Now, that is the question—at least the question which I wish to raise—the doubt which is on my mind and which I sought to have the aid of the Convention about. Now, we want no technical definitions of treason nor decisions of courts that had not this question before them. In order to answer the question whether there may be treason in the acceptation of the word which the word receives in this country, we come to the question whether war can be levied against a state that is not war against the United States. Then, sir, the same arguments which I adduced last evening apply and come in. In the very moment that an armed force is put on foot for the overthrow of one of these state governments, it is war against the United States. If an armed force is put on foot for the purpose of obliterating Ohio county, it is certainly war against the State of Virginia. That county is a part of the state; and you cannot attack a part without attacking the whole. These states are integral parts of this Union. That is they are complete parts. They do not hold the relations to it that counties do. But they are the integers that make up the Union, and if you attack one of the states, don't you attack the United States? It appears to me there is nothing plainer. That if you attack any portion of one of these states for the purposes which make treason when it is accomplished you attack the United States. Therefore, no war can be made against a state which is not war against the United States. Now, then, if that is so, then the John Brown raid was unequivocal war against the United States; and had the United States at that time refused to take part in the suppressing of that raid, if their assistance had really become necessary, the United States would, as every member of this Convention must admit, have been derelict of its duty. I do not know, sir, or remember enough of those trials. It got to be pretty much of a farce—to know whether he was tried for treason or murder or both. But I would not hold that as tending to settle this question. The whole thing was done under great excitement, and there was enough to convict him of murder without convicting him of treason. I am indebted to the gentleman from Kanawha for his statement of it. I think, though, indictments were preferred for both treason and murder. However, I don't consider that what was done there would weigh much in settling this point.

But I want to call the attention of the Convention to the question as I have propounded it. Can war be levied against a state which is not war against the United States? If so, then the levying of war under the circumstances supposed is a levying of war directly against the United States. The Constitution declares that the levying of war against the United States is treason, and provides for its punishment. Now, sir, this is not in derogation of state rights, if it is as I have reported it. When the states have surrendered anything to the United States, it is but folly to claim it as a state right. When they have conferred any power on the United States for its exclusive exercise, of course no argument can be drawn or no assertion can be made that it is anything in derogation of the state. Our forefathers who made our Constitution considered well what they were about; and by giving the United States these powers, they carried out the principal object for which they had assembled. The old confederation had been found too weak for its purposes—wrongly constructed, made in a hurry during the pressure of war, and it is not surprising that it should have been found defective. The very theory upon which the United States Government was established, and upon which, permit me to say, it differs from every other government that ever was established—for I don't think that even in the South American Republics the principle is recognized to the same extent; and, sir, it was a grand discovery in politics—is that we should have separate state governments, acting entirely within their own sphere; acting directly upon the people within their limits; enforcing their laws—their state laws—by the immediate operation of their administration and punishing for offences against them; operating directly on the people; levying their taxes directly from the people; and doing all these other acts of sovereignty and operating in every one of them directly on the people themselves. When the confederation was set up, it was to operate on the states, and when money was wanted

Congress made a requisition on the different states for so much money from each. Well, they paid the money or not as suited them —and it generally did not suit them to pay it. But, sir, when this general government was made by the Union of these states, the principle was engrafted on the Constitution that it will also operate directly on the people. When offences against it are committed, its own officers execute its own laws. When a tax is to be levied direct, it is levied on the people the same as a state and collected by United States officers. The direct tax of 1812 was collected in that way. There were United States assessors, or corresponding officers, and the tax was collected direct from the people. That is the grand distinction between our government and perhaps all others—certainly all others that preceded it. Now, sir, that distinguishing feature must be preserved everywhere; and therefore whenever an offence is treason against the United States, it ceases to be treason against a mere state. And if it is treason only against the United States, the United States only can operate for its punishment. And if we give up this principle, where do we stand? I told you the ground had been taken by the executive power of the restored government that every dollar that was expended by this restored government for the purpose of suppressing this rebellion—no matter where, when, how, under what circumstances,—we claim it to be a debt to be refunded by the United States Government; and upon this very principle whoever aids in levying this war against the United States, whoever adheres to their enemies, giving them aid and comfort, is an enemy of the United States; and whatever is done to put down this rebellion is done in aid of the United States for that purpose. In the same way, as has been already stated, the United States by the Constitution, which deprives the states from equipping armies and ships of war in time of peace, so that a thing of this kind might constantly break out when they were unprepared for it—is to keep both a standing army and ships of war in time of peace as well as war. These clauses which have been referred to show that it is the duty of the United States to suppress any insurrection in the states, whether these are armed riots that break out in the cities, led and controlled by men banded together to effect some purpose, to destroy a flour store in one case or a convent in another, or for some purpose like that—whether these are levying war against the United States, may admit of question. Whether they are levying war, in fact against anybody in the technical sense of those words, is a question. But a parcel of men, with their passions excited, go to work and commit depredations upon the property and persons of their neighbors. When this is the case in the cities, the police interfere and that is the last we hear of it. Sometimes the mob is too strong for the police, and then the aid first of state troops and volunteer companies is called in, and if insufficient, as in the Dorr Rebellion, in Rhode Island, and it may be in the Kensington Riots, in Philadelphia, United States troops are called in. But to guard the rights of states, the government is to be the judge in all cases whether the cause for interference has arisen. To protect the states from being invaded under pretence of suppressing insurrection, it is made the duty of the legislature if in session, and if not in session of the governor, to apprise the United States when these difficulties arise.

Now, there may be, as I have already stated, many things which are in derogation of the state government. There might be something—though I think it is hardly possible—that looked directly to the overthrow of the state government and which might be treason and yet not levying war against the state or United States. And certainly we may suppose that these mobs where the troops have been called in to put them down had no well formed idea that they were going to carry matters so far as to overthrow the government; but because their movements are in that direction, they may come to be treason before those who engage in them get through with them.

I think, therefore, sir, that this question is a narrow one, and that is, simply, whether treason, as defined by the United States, can be committed against a state—not whether the overthrow of a state government may not be plotted and acted for and that exertions may not be made to overthrow a state government, but, simply, whether when those exertions are made—when a band of armed men are organized, levied, for that purpose, it does not immediately become an attempt to overthrow the government of the United States itself; because you cannot destroy or obliterate one of the states of this Union without striking at the Union itself; and in the same way the mob that were destroying the property of their neighbors may be construed to be an attack on the state sovereignty. So any attack on the smallest portion of any of the states of this Union is within the principle which would make it an attempt to destroy and overthrow the government of the Union.

So that in any way I can consider it, I cannot imagine the levying of war for purposes inimical to the state which is not at the same time inimical to the United States. And then, if I am right in the principles I have laid down or cited, from others, whenever it is intended for the injury or overthrow of a state it is as well intended for the injury or overthrow of the United States government. The offence is against the United States; and when we get as far as that, when we admit that the offence can only be committed against the United States, then we admit that the United States alone has power to punish it.

MR. BROWN of Kanawha. One word in reply to the gentleman. He predicates his argument on an assumption which I think false in itself and therefore leads the gentleman into continual error. He lays out as his groundwork the proposition that no injury or attempt to overthrow a state government can exist without being an injury or attempt to overthrow the government of the United States—that it must be levying war against the United States. Well, now, let us consider that for a moment.

Some years ago France was indebted to the citizens of the United States which assumed and France acknowledged the debt. After a long negotiation the king of France declined to pay; and General Jackson, who was president at that time, just said if they did not pay he would make them pay. And suppose, now, he had carried it into execution and attempted to make France pay: there would have been no attempt to overthrow the French government but only to compel by physicial force the performance of a duty which they refused to do.

MR. VAN WINKLE. Might not the result of any war commenced against the government for any purpose be the overthrow of that government?

MR. BROWN of Kanawha. The overthrow of the government may follow or may not. That has nothing to do with the fact of levying war. It very often follows, but much more rarely than that war exists. Every government in the world almost of any standing in time has had a war and yet has not been overthrown. Parties and governments fight until they get tired and then make peace. War is a thing that can exist without overthrowing the government. Well, now, I only want to show that real, actual levying of war may exist in the case here as well as in the case I supposed. Suppose the State of Virginia, finding herself pressed for money, goes into the State of Ohio and borrows a million or two of dollars. Now, it is a just debt and she owes it. Now, I want to know when Ohio asks for that money how she is going to get it. Has the Constitution provided any way by which she can sue and obtain the money? When the Constitution was formed there was a clause in it which gave the Supreme Court jurisdiction to enforce the collection of debts against the states, but the people of the United States rose in their might and denounced it, and in a short time after its execution they put an amendment in that no suit should be brought and held against a state.—That no state should be arraigned at the Bar of the Federal court or be held to answer a charge of either a state or individual. Well, now, sir, you could not sue the State of Virginia. You could not arraign her, issue execution and collect the money.

MR. VAN WINKLE. I have here the Constitution. Will the gentleman point me out the provisions to which he refers. It only prohibits the citizens of one state from suing another state.

MR. BROWN of Kanawha. Very well, I take that. The citizens of one state, Virginia, borrow of the citizens of Ohio. Now, sir, how can those citizens get their money when they ask for it? The State of Ohio will see that her own citizens are rectified and the State of Ohio will stand by and maintain the rights of her citizens. And they come to the federal courts. The Constitution says they shall not sue the State of Virginia and she cannot be compelled to answer before any tribunal, and she repudiates the debt. Have not states repudiated? But did you ever hear of a suit in Federal court to make them pay? Mississippi repudiated her honest debts because there is no power in the Constitution nor in court that can make her pay. She just declines and stands on her reserved rights. Well, sir, supposing Ohio feeling aggrieved, and feeling the obligation to protect the rights of her citizens, says to Virginia, "If you don't pay, we will make you pay! We will test this question at the point of the bayonet." And they send the Ohio militia over here and undertake the collection by force of arms by taking the property from your farms. Do you call that levying war against the State of Virginia or not? You meet them on the other side with armed force and drive them across your border. And do you say that is no war? Now, sir, can there be more actual war than that made under authority of two state governments and lay waste the country? That is war of the strongest kind, and that is no war against the United States. There is no attempt or no purpose to uproot or destroy or break down the government of the United States. The other states are not embarked in it. Why, if you say that because Ohio comes over and wages war on Virginia that Virginia is a part of the United States and therefore it is waging war on the United States, why, sir, Ohio is as much a part of the United States as Virginia, and therefore it would be the United States waging war on the United States.

MR. VAN WINKLE. It is so now.

MR. BROWN of Kanawha. I maintain it is not so now. It is the United States waging war against those citizens in rebellion against the United States and those only; and its obligation is to defend and protect those who maintain their allegiance to the United States government. But here is a case where war can exist to attempt to break down the government of a state, for they may carry it that far. But then this war of Ohio against Virginia would be no treason. Treason can only exist by hostility of a citizen who owes obligations to this government. And if Virginia should join in that raid from Ohio against their own state then they would be in treason against their government, or aiding their enemies to destroy the state government and be within the dominion of this very provision we are proposing to insert.

But the gentleman argues that whatever Congress are authorized to legislate upon is prohibited to the states—that the Constitution secures to Congress the right to legislate on the subject of bankruptcy and that the courts have held that the states cannot pass a bankrupt law. Now, there are clauses in the Constitution which conferring power on the general government excludes the exercise of any such right by the states because they have granted it away. But there are other grants the states have given and reserved some grants to themselves and they can exercise it. Congress can legislate on taxation, and so can the states. Congress can legislate for the punishment of the passage of counterfeit money and coin of the United States and so can the states legislate to punish the individual who passes the same coin. You find every day trials in your state courts not only for passing counterfeit bank-notes but Federal coin; but in the Federal courts they prosecute men for passing counterfeit specie of the United States; but you never hear of such a thing in the Federal courts as prosecution for counterfeiting bank-notes. Because that has nothing to do with the government. The states issue these bank-notes. The government only prosecutes those who counterfeit its coin, and the Constitution secures the government the right to issue a government currency; so that these jurisdictions legislate on the same thing. They are not in conflict because the state is as much interested in prohibiting the counterfeiting of its currency as the general government is.

Then, sir, the fact that because some act might be in some given case treason against the state and treason against the United States, it does not at all prohibit by the state the same action as may be taken by the general government; and the state in punishing that act punishes it as treason against the state and not against the United States; and if in any particular case a man should commit an act which was treason against both, then he would be liable to be hung by both parties. It would present precisely the case of John Brown that Wise alluded to when he said there would not be much left for the others when he was through with him. The question would be only which would get hold of him first. But there may be a case of hostility and treason against the state that would not be treason against the United States at all. And therefore there may be no conflict of jurisdiction whatever. Now, in that very case at Harper's Ferry the only question that arose about treason against the United States was because John Brown committed his raid inside of the armory of the United States in the territory that had been ceded by the states for the purposes of that armory. He took the arms of the nation and expelled the employes of the government and killed some of them who were citizens of the state outside of that armory and not within the jurisdiction of the United States so there was a case where a man was guilty of both treason to the United States and treason to the state; and he was tried and convicted of treason to the state; and I have no doubt that he would have been convicted of treason to the United States after the State of Virginia was done.

MR. LAMB. Mr. President, I have been very much instructed by the argument, but I must say there is very little of it to the precise point which was raised by the motion that was made whether it was necessary to have such a provision in the Constitution. The State of Virginia, for instance, has had in operation a treason law, which the gentleman from Kanawha cited, ever since 1776, and she has never had any provision of that subject in her constitution. I understood the gentleman from Cabell as quoting from his book that Massachusetts had some provision in her constitution on the subject of treason. That I believe is not the fact. Here is the Constitution of Massachusetts. The quotation he makes is from a law of Massachusetts and enacted independent of any provision in the constitution. So it is in the State of New York. They have the law of treason which was cited by the gentleman from Cabell, but you can find nothing in the constitution of the state on that subject. So it is in the State of Ohio. I have been unable, as I stated before, though I have not looked over the constitutions of all these states, to find in any one of them, so far as I have examined them, except the little State of Delaware, a constitutional provision on the subject of treason. The legislature will have full control over this subject without any provision in the Constitution; and it strikes me it is well to pause here. Are you going to put a criminal code in your Constitution? Where will you draw the line, if you begin? If you involve yourselves in the question of treason, how many provisions have you got to insert in your Constitution defining and deciding whether this or that offence shall constitute treason or whether it shall be punished under some other name. The provision which was inserted in the Constitution of the United States was inserted for a different object entirely from what this provision is inserted here. It was inserted for the purpose of restricting, not of extending, the definition of treason. Where it is inserted in the constitution of any state, it is for an entirely different purpose from what seems to be contemplated by the section now under consideration. It is inserted for the purpose of restricting legislation on such subjects and not for the power of extending it. But if we do insert a provision in our Constitution in regard to the subject of treason, I am, so far as that particular offence is concerned, decidedly of opinion that we should adhere to the old land marks which have stood unaltered for a thousand years and have come down to us from the early days of our jurisprudence and settled an acknowledged principle in regard to that particular offence. The law of treason which is contained in this clause will give rise, gentlemen, if you see proper to adopt it, to many nice questions upon which the ingenuity of lawyers may be exercised. If you will have a provision on the subject in your Constitution, adhere to what has been settled on that subject by the wisdom of ages. For this law of treason as it stands in the Constitution of the United States, was adopted many hundred years before that Constitution was put in force. It has undergone investigation, and has met the approval of the jurists of all times from its first adoption to the present. I do not want to interfere at all in the discussion which has taken place in regard to the question whether the levying of war against a particular state, which is of that class properly under the definition of the term "treason," is necessarily a war against the United States. It may be, or it may not be; but in either event it strikes me the wisest course for us to adopt is to leave our Constitution in that respect, as we find it, without any provision on the subject. If we attempt to increase this particular branch of the criminal code in our Constitution—if we go out in that direction—we will never know where to stop.

Mr. Lamb's motion to strike out the 13th section of the report was then put and rejected, by a vote of ayes 15, noes 23.

MR. DILLE. Mr. President, I am free to say, although I voted against the motion to strike out, that there are some things in this 13th section that are not entirely acceptable to me; and I would suggest the propriety of recommitting the section to the committee. It seems to me we might obtain the object better by so doing.

MR. VAN WINKLE. The gentleman can offer an amendment.

MR. DILLE. I am not prepared now to offer an amendment. It was in reference to this grade of punishment. It seems to me that is something that might be introduced by legislation more properly than by a provision in the Constitution.

MR. BATTELLE. Mr. President, I offer this amendment; that this section be recommitted to the committee.

MR. VAN WINKLE. With instructions?

MR. BATTELLE. No.

MR. VAN WINKLE. There is no use in recommitting it unless you indicate in what way they are to revise it.

MR. BATTELLE. If that motion is in order, I would simply move to recommit.

MR. PAXTON. I would suggest that probably the views of members may be met by a motion of this sort; to strike out the second clause. I make that motion, sir—to amend by striking out the second clause—the one beginning:

"Every attempt to justify and uphold an armed invasion of the state, or an organized insurrection within the limits thereof, by publicly speaking, writing or printing, or the publishing or circulating of any such writing or printing, during the continuance of such invasion or insurrection, shall be deemed an adhering to the enemies of the state."

MR. VAN WINKLE. I have already stated that the committee have some doubt as to the propriety of the whole thing but prepared the section. If the Convention decides—as it has—that treason of this kind can be committed against the state, I wish to say that there has been some difficulty in ascertaining what was such an adhering to the enemy, giving them aid and comfort, as should make a person obnoxious to the first clause; and it was the opinion of the committee that what they have there described should be considered such an adhering. It is carefully drawn, sir, as the Convention will notice. It must be an armed invasion, or it must be an organized insurrection, and then every attempt to justify and uphold it during the continuance of such invasion or insurrection shall be deemed such an adhering. Now, sir, controversies constantly arise, differences of opinion are manifested, among the citizens of this country on what are considered by some political measures. Many think this would tend to restrain expression of opinion against, perhaps, oppressive acts of the government which have led to insurrection. That is to say, sir, the insurrection or invasion must be actually on foot; and then I apprehend no one will say, unless it is intended to carry it out to the extent of revolution that it should be in any wise justified or upheld. However great the grievances we may experience under our Republican form of government, we have yet a remedy in the laws. But if that is not ample enough, we have it in the frequent recurrence of elections, in the influence which public opinion is always sooner or later to exert on the government. We have many sufficient remedies without the resort to an armed insurrection or an organized insurrection. Therefore, whenever such an insurrection takes place it ought to be frowned down by every good citizen. However great the grievance, however oppressive the burdens that may have been fastened on us by government, if such should be the case, yet while there is a possible remedy, while by the operation of the laws; by the change in our representatives; by the action of public opinion a remedy may be had, certainly, sir, insurrection cannot be justified. Well, sir, when the insurrection ceases; when the foe is put down; when peace is restored, every citizen is again at liberty, as he was before, to canvas the causes which produced it; to find fault with the government; to condemn the action that he considered oppressive; and to write and speak as fully and publicly upon the subject as he may choose. But while it continues; while the state or country is exposed to danger, as it always is from anything like an armed insurrection within its borders—while that public danger continues, people are not to justify or uphold it in any way. Whenever war is thus levied against the state, the duty of every good citizen, no matter what may have been his previous opinions—no matter how much the man may have suffered from what he considers the oppressive acts of the government, he must join and unite with the government of the country and other good citizens to crush out this rebellion. Would it have done during Shay's insurrection, or the whiskey insurrection, to permit people to justify and uphold that while it continued?—to permit people to write and publish that the government was wrong and the rebels were right? I think not, sir, but if those excise laws in which these insurrections originated were oppressive, there was a remedy without resort to insurrection. But when the insurrection is conquered then the citizens were at liberty, as far as was proper and right, to speak and publish their opinions on the subject.

I think, therefore, that there is a propriety in this second clause, if anything on the subject is retained—a propriety in defining at least so far as what may constitute such an adhering to the enemies of the country as the first clause of this section contemplates.

MR. LAMB. I must confess, for one, I must protest against this second clause. The Convention has entered upon dangerous ground. An armed insurrection does exist. Then the publishing or circulating of any writing or printing that may be regarded as an attempt to justify or uphold that insurrection, is made by this treason. During the existence of this insurrection, the press may find it necessary to criticise, perhaps freely, the measures of the government. They are to exercise that privilege with a halter around their necks. A mere slip of the pen, if a disposition to arbitrary government is to go on in this country, may be construed into an upholding of this insurrection. The circulating of any such writing or printing becomes treason. I tell the Convention that they are treading here upon dangerous ground. I would much prefer, if the provision is to be retained, that we retain it as we find it in the Constitution of the United States. It does not prevent the punishment of a particular offence, gentlemen, if an offense has been committed, that you are not at liberty to call it treason. If it is necessary to suppress publications, it does not prevent you from putting a proper guard on the press that you are not at liberty to consider the publication of an article, or the handing of the article to another man to read after it has been published—that you are not to regard that as treason. If that can be construed into an upholding of the insurrection, I think it would be very unfortunate for the Convention to adopt this clause.

MR. BROWN of Kanawha. I think the gentleman who has just taken his seat has misconceived the object and effect of this clause. I regard this, sir, as the citizen's safety rather than the toil into which he may inadvertently fall to his own ruin. The first clause declares what treason is: that it shall consist only in levying war against the State, or in adhering to its enemies, giving them aid and comfort. Now, sir, suppose a case. Here is an insurrection, or here is a rebellion, in the State. I am an individual about to take action, and I read there that treason is levying war. Well, I can understand that. I have some general knowledge of what levying war is and I can keep out of it. But then the second—the adhering to its enemies, giving them aid and comfort. That puzzles me and I do not know what I am doing that gives aid and comfort, and cannot. There are so many things that a man may do which in the eye of the law, or in the language of the law, as it stands, or in the Constitution of the United States using the same language. That treason is making war or giving aid and comfort—that the question is to the citizens, he wants to know what it is that constitutes giving aid and comfort. If you tell him, he will not do it. But if you leave it to his ignorance, he doesn't know until he finds the halter around his neck and arraigned before a tribunal for doing an act which he did not know at the time was giving aid and comfort. Now, this undertakes to explain to the citizens, telling him what is aid and comfort! "Every attempt to justify and uphold an armed invasion of the State, or an organized insurrection within the limits thereof, by publicly speaking or writing or printing, or the publishing or circulating of any such writing or printing during the continuance of such an invasion or insurrection shall be deemed adhering to the enemies of the State." It explains to the individual just exactly what the words "giving aid and comfort" mean, that he may understand what the treason is; that instead of misleading and getting him into difficulty it is the way to keep him out of it. I have no doubt thousands in this state have already asked themselves, what is this giving aid and comfort that I may avoid the crime? Why, you go to the courts and the lawyers and they will tell you it means almost anything and everything and that the individual can scarcely turn hither or thither without committing some act or offense under this statute, without knowing what it means. Now, this section just tells him what it is, and if he keeps out of that he will know how to keep out of the clutches of the law. Now, there has to be legislation to carry this into effect. Therefore I vote for this to give the citizens an intelligent definition of what the crime of treason that he is to commit.

MR. LAMB. The gentleman will excuse me: this second section is cumulative, to borrow a word from the law book. The first clause declares that treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. That clause is not limited by the second clause at all. You retain all the difficulties of the present treason law, if there are any; but the gentleman knows, and I know we cannot get a very precise definition of what is adhering. This section is specially directed at the publishing or circulating of any writing or printing which may be construed as an upholding of the insurrection.

MR. STEVENSON of Wood. Mr. President, I have but a word to say in reference to this matter. The Convention having decided to retain the section, it seems to me the next best thing is to get it as perfect as possible. And I am very decidedly, sir, opposed to retaining this part of the section which it is proposed now, by the motion of the gentleman from Ohio, to strike out, and for the reasons urged particularly by the other gentleman to my left from Ohio. I think if there is any fact that the world has learned and ought to profit by it is that it is dangerous to hang any loose words about this subject of treason—anything that is capable of receiving a double meaning or a different interpretation from that conveyed by the words precisely as they read. And I think, sir, that this paragraph, or number of paragraphs, proposed to be stricken out are capable of different interpretations. If we were certain that no abuse would be made of this portion of the section under any circumstances, it might be well enough to retain it; but I think it highly probable, sir, that it will be abused to the same extent that ambiguous language has been abused on this subject of treason if not in this country at least in almost every other country on the face of the globe.

There is another matter, sir, I wish to state here. I do not know that it would be strictly speaking to this amendment. I believe it would. That is, if we are to retain this section on the subject of treason I would like to see the wording of that same provision in the Constitution of the United States on the same subject added, as the crime is one that is punishable with death and proposed here to be punished with death, and if not, with other penalties that are very severe. I should like that clause added. I forget precisely the words, but the purport of it is that before the person can be convicted of treason some overt act shall be proved by two witnesses or the person shall make an open confession in court. I think that necessary to protect the rights of citizens when party prejudice should run high or strong local or sectional excitements be produced in the community.

I am in favor of striking out the part proposed by the amendment.

MR. PAXTON. Other gentlemen have already stated the reasons that influenced me to make the motion. I will only add that I object to this clause not on account of its entire novelty but because it appears to have special reference to the present peculiar condition of things. I do object to introducing into our Constitution anything that appears to have in view the present peculiar and unfortunate condition of things in our country.

The object of the Constitution is simply a declaration of plain, fundamental principles, and leaving to legislation to carry out the details.

MR. SINSEL. Mr. President, I am opposed to the whole section. I voted in favor of striking it all out; for it is well known we owe allegiance to two governments, first to the government of the United States and second to the state government. It seems to me from the language in which this section is couched that the two governments may come in conflict with each other. The question involved in our present national difficulties is only that the states claim to be sovereignties and the United States claims to be sovereign. Well, now, this is the way it stands here, just as the present insurrection has proved. Here is the government at Richmond claiming our allegiance. With a clause in the Constitution like this, if they could catch us it would hang every gentleman in this Convention. We owe, they say, allegiance to the State of Virginia and we are now adhering to the enemies of the state. Now, if they had it in their power to catch us, what would be the result? Well, if this section is retained there ought to be an exception showing that the armies of the United States should not be regarded as the enemies of the state, as in the first clause here of this report, the first section, we have adopted this: "The State of West Virginia shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land."

THE PRESIDENT. The question is upon striking out.

MR. SINSEL. There is a treason clause in the Constitution of the United States we are incorporating in our Constitution and it does seem to me it will be sufficient to meet every emergency that is likely to occur.

MR. HALL of Marion. Allow me to ask the gentleman from Taylor what worse condition we could be in under that provision of the Constitution than we are in now by the statute it is proposed hereafter may pass in reference to this thing—whether we have not statutes on the book now that would hang every one of us without any constitutional provision; and what he proposes to ask here is to keep it out of the Constitution and leave the legislature to hang us. I would as soon be hung constitutionally as by legislation.

MR. BROWN of Kanawha. The gentleman on my left (Mr. Sinsel) seems to be somewhat alarmed at the apprehension of our neighbors over at Richmond hanging us. Now, sir, whether we would be hung for treason under the law of Virginia would depend entirely on who the judges were. If they were our foes, they certainly would hang us. But just reverse the case and suppose we catch them and we have the same identical law to try them by. We maintain we are the State of Virginia and they imagine they are. If we catch them and it is tried and decided before one of your judges, he decides that they are guilty of treason against the State of Virginia and the law fixes the sentence of death. Now, the question all depends on the judge and we claim as much to be the state as they. They are in precisely the same category as he supposes ours if they should catch us. Why, what is it that gives us authority here today but this state government that you are now upholding and maintaining? Against which treason can be committed just as effectually, unless it is a bogus government. Now, if you acknowledge your whole concern is bogus, you ought to abandon it at once. But I understand we stand here maintaining the fundamental principle that we are the only true, lawful and legitimate government, and that these men whom he seems to think would hang us are only usurpers of the government and attempting to usurp the rights and freedom of the people and that they are amenable to the law he is seeking to try us by. It is this very doctrine of treason that secures us against the attacks and violence from this very quarter, and it is the only manner you can maintain and uphold the government you are embarked as the rightful one. I do not acknowledge that we are traitors either against the Union or against the state, but that we are here lawful citizens of both, and not the perpetrators of a crime, engaged in a high and holy cause in restoring the government and maintaining the principles of freedom.

MR. PARKER. Mr. President, it seems to me that the second section here which is proposed to be stricken out is a particularizing explanation, as was remarked by the gentleman from Kanawha, which it is certainly well to give to the people. The first sentence, copied from the Federal Constitution, says the levying of war or adhering to its enemies, giving them aid and comfort—either of those will constitute treason. Well, now, adhering to the enemy, giving them aid and comfort, is a matter of uncertainty in the minds of a great many people, and this explanation thus particularizing would enable them to know how to avoid the offence. It is not cumulative—that is this second clause. It is included in adhering to the enemy, giving them aid and comfort. This speaking and writing is giving aid and comfort to the enemy. And I think the opinions of the eminent judges throughout the country, so far as they have given their opinions, are to that effect. Well, now, if there is an armed invasion—in reply to my friend from Taylor—an armed invasion is necessarily a hostile invasion. It is a trespass; and more than that, it is an aggression —an armed aggression upon the constitutional rights of our state. Therefore, it seems to be not practicable that there could be a marching in of Federal soldiers but would be legitimate. They come for a legitimate purpose, to protect the Federal law and the Federal Government. That is not an armed invasion but it is a rightful coming upon their own soil if within the scope of their power. That seems to me would cover an armed invasion. It must necessarily be a hostile, warlike aggression on the rights of the State. So also is an organized insurrection, which implies an armed insurrection—an association of citizens of Virginia—an association organized, armed, rising up against the government, the legitimate and due execution of the government of Virginia. Well, now, where either of those exists, speaking or advocating certainly can do very much. What I mean is it is well to particularize what giving aid and comfort is, because I believe there are a great many people who do not know anything about it. Well, as I understand, these particular things shall be deemed such an adherence as to cover the aid and comfort. I do think where we have such treason going on as we have now we should put it on the book on clear plain letters that everybody can understand it; and then if they violate it, punish them. I shall, for these reasons be against striking it out.

MR. SINSEL. I just want one remark. The gentleman from Kanawha goes upon the supposition, founds his argument on the supposition, that the state government will ever remain loyal. Now, if they were to do that, I would have no objections to the section; but what has been the history of the past year? It is the disloyalty of these governments that has brought us into all this trouble and danger. I deem the government at Wheeling as the government of Virginia; but we were without it for a while. What position did we occupy in Taylor county before this government was restored and when the armies of the state were there threatening that they would hang us if we did not shut our mouths. What did the commonwealth's attorneys do? But go around and tell us if we talked so and so it was treason against the state and that before ten days we would be thrust into prison for it if we didn't close our mouths. I admit if the state government was always to remain loyal we would have nothing to fear from that section, but the reverse of that has proved the case.

MR. LAMB. It is very seldom I occupy the floor twice on one matter; but I do feel an interest in the Convention coming to a proper decision on this subject. I do feel that they are treading here on dangerous ground. As to the advantage which is supposed to exist in this section, that it is a definition of what is meant by adhering to the enemies of the commonwealth, if you want to accomplish that advantage, gentlemen, you have got to insert a little book here in addition to this. There are a hundred, a thousand, acts that are included in these terms that may need definition and decision just as much as the one act that you see proper to add to the long one that already exists. The difficulty that strikes me here in this is: during the existence of an armed insurrection against the government, any opposition to the measures of that government may be considered as upholding the insurrectionists. How are you to distinguish? The government in the suppression of this insurrection sees proper to adopt a certain set of measures which we are utterly opposed to and we do everything in our power to defeat those measures. The government will tell you, gentlemen, that in taking this course you are upholding insurrection. How are you to distinguish between an opposition to measures which the government has adopted for the purpose of suppressing that insurrection and acts of upholding that insurrection? If you publish anything containing too free a criticism of the acts of the government are not you running a risk of being considered to have published something that upholds this armed invasion or this organized insurrection? If you improperly oppose, gentlemen, any measures of the government that are intended this insurrection, is not it in fact upholding the insurrection? These are the risks which we are running by introducing this clause. The gentlemen of the *Intelligencer,* the gentlemen of the *Press,* must be careful with this clause in existence how they criticise, or denounce, if you please, any measures that the government may adopt for the purpose of suppressing the insurrection. Even the circulation of an article that may be construed so will be perilous. If I, having got a copy of the *Press* that contains an article liable to this unfortunate construction—if I hand it to my friend from Taylor to read, I am guilty of circulating an article that may be construed to uphold this organized insurrection.

I do not think, Mr. President, in any view that this section is proper. And striking it out doesn't prevent your legislature from providing any punishment that may be necessary. You are, in fact now, gentlemen, undertaking not to make a constitution but you are undertaking to legislate in regard to this matter. Leave it out, and if any punishment is proper or necessary the legislature can still provide for it. You run no risk on that side of the question. You are running very great risks on the other.

The difficulties that have occurred to the gentleman from Taylor also occur to me. Yet before I vote on the question, I should like to have it explained. It has not yet been explained to my satisfaction. Suppose, sir, that a law of the United States shall be resisted by citizens of the State of West Virginia, and the United States to secure the execution of its law sends in an armed force, are we authorized to resist that? Have we not already provided that the laws of the United States shall be the supreme law of the land? And if we attempt to resist that invasion by forces of the United States, are we not guilty of treason against the United States? And then if we do not resist—if we encourage it; if we give it any aid and comfort; if we attempt to justify and uphold it—are we not guilty of treason against the state under this provision? Which horn of the dilemma shall we take? Why, just as we are doing now. We will take the strongest. We will take that which we believe to be the supreme law. The two will conflict.

I am not willing, I believe, sir, to vote for the provision as it now stands. That is, I will vote for the motion to strike out unless I can have it explained how we are to avoid coming in collision with one or other of these powers.

MR. HALL of Marion. I confess, sir, that I have not made up my own mind on this question and I do not rise with a view of arguing it. It is a very difficult matter. As the gentleman from Ohio says, it is dangerous ground, when we speak of trammeling the expression of free thought and free opinion by a free people. I do not labor under the difficulty of my friend from Harrison and my friend from Taylor. I do not think we are to legislate or so arrange our laws as to leave loop-holes to do the very thing which the laws contemplate shall not be done. I want no way of escape from anything under the language of this section and we should leave none. If we are to leave the door open for insurrection against the government we then destroy the government. And when such a case occurs as suggested by the gentleman from Harrison—when we are placed in a position where one part of the state maintains they are the government and we maintain we are the government, as remarked by the gentleman on the motion that preceded this, we are placed in a position then of being liable to be hung either by the forces in the east or by those in the west. That is one of the things that no legislation can free us from. We are placed in that position without any Constitutional provision. Now, I ask—I suggest this thing because I really want to elicit information that will satisfy my own mind: suppose we adopt the suggestion of the gentleman from Ohio and we make no provision whatever in the Constitution for the suppressing, trammeling or restricting the press or persons, and we leave that whole thing open to the legislature. It was so under the old Constitution; and eastern Virginia a long time since, looking to the fact that our interests would drive us some day to separate ourselves from her, went to work and prepared the legislation—she dug the pit into which she has now fallen in order to prevent any uprising or any government looking to that end of this country. Now, suppose we strike it out. What trammel have you on the legislature that they will not do this very thing? You leave them without any restriction of power; and they may make any provision they may be pleased to do and place you in the same position that you are to be placed in by incorporating this section.

But then it occurs to me that there is a propriety, as I remarked on the former motion, in these matters that are so difficult and that are to be acted on when the public mind will be so much excited, when there seems to be no sober intelligence left to manage and control—there is an eminent propriety in our fixing land marks and saying to those who are to be called to legislate "Thus far shalt thou go and no farther."

As was remarked by the gentleman from Kanawha, it is for the benefit of the people. The enforcement of all penalties looks to the object of preventing crime in the future. When we prescribe in our organic law, which will be a permanent mark, not to be changed by every year's legislation—when we prescribe and define the penalties and describe the character of the offence that shall constitute a felony, it stands then as a warning to every citizen and he is notified that that is forbidden matter and he is warned at his peril to abstain from it. I regard that as a benefit to the people—a warning, notice and definition and it avoids that old objection to the laws that were posted so high that they could not be read by the people for the very purpose of interpreting them.

These are thoughts that I have on this question. I confess I have yet my difficulty what we ought now to do notwithstanding these ideas. I do not know whether under all the circumstances it is judicious for us to retain or reject the clause. But we cannot certainly, as would seem to be indicated by my friend from Taylor, and suggested by my friend from Harrison, leave the doors open simply because it may be in our way; because whenever these things occur—whenever circumstances like the present arise, we must have laws; they must be enforced; and if the government, as the gentleman from Harrison says, becomes disloyal, we cannot go to work and legislate to adopt remedies against that. Whenever that thing occurs, the majesty of the people is their only remedy. They have got to take the responsibility of acting and act, not in derogation of law, in violation of law but by their strong arms to thrust from places of power those who are trampling on that or upon all law. I must insist that whatever we do or do not do, we shall not provide any way of escape for any parties who may place themselves in a position of rebellion against the State.

MR. CALDWELL. This is a very grave and important matter, sir. It occurs to my mind that the chief objection to this portion of section 13 which it is proposed by the gentleman from Ohio shall be stricken out, is an attempt to declare what acts shall be deemed an adhering to the enemies of the State. Now, sir, as it has been truly observed there might be very readily conceived in the mind of any member many other acts than those named in the resolution that would be an adhering to the enemies of the country. Therefore, it has occurred to me, sir, that by striking out all after the word "thereof"—that is to say I mean the words "by publicly speaking, writing or printing, or the publishing or circulating of any such writing or printing," that the particular objection made by the gentleman from Ohio, with so much force, might be obviated. It would read then that "Every attempt to justify and uphold an armed invasion of the State or an organized insurrection within the limits thereof during the continuance of such invasion or insurrection, shall be deemed as adhering to the enemies of the State." It occurred to my mind the objection might be obviated in that way. But I confess it is a very grave and important matter; and that we may have further time to consider it upon proper principles, I move, sir, we now adjourn.

The motion was agreed to and the Convention adjourned.

XVII. MONDAY, DECEMBER 16, 1861.

The Convention was opened with prayer by Rev. R. L. Brooks, member from Upshur.

The minutes were read and approved.

MR. VAN WINKLE. A gentleman—I forget who—some days ago offered a resolution respecting a recess.

THE PRESIDENT. The gentleman from Wayne.

MR. VAN WINKLE. Which, either on my motion or suggestion, was laid on the table. I am about to move that it be taken up and considered. It is a matter of entire indifference to me personally; but I feel I should very much like to know if we are going to adjourn this week, to know at once whether that is going to be the case—not entirely, sir, in regard to private convenience but in regard to the action of the committees with which I am connected. I have understood several gentlemen came here not expecting to remain longer than this time and that they very much desire that there should be a recess. I hope the resolution may be taken up and the matter disposed of now, so that we shall have had notice of what we are to do.

MR. BROWN of Kanawha. I would suggest to the gentleman to withdraw his motion for a moment. I wish to make an application in behalf of my colleague.

MR. VAN WINKLE. I will withdraw it.

MR. BROWN of Kanawha. My colleague has just received news of dangerous illness of his brother, Dr. Ruffner, of Kanawha, and told me he expected he was now dying. He is hastening home to see him and asks leave of absence for ten days. I move the leave of absence be granted.

The motion was agreed to.

MR. VAN WINKLE. Well, sir, I now move that the resolution in reference to an adjournment or recess be taken up. I hope gentlemen will be free to express their wishes on it.

MR. STUART of Doddridge. I would suggest to the gentleman from Wood that we have a very thin house this morning, and I know several members of the Convention that are much interested in this matter who are not present. Would it not be better to pass by it this morning and wait until the house is full?

MR. VAN WINKLE. There is over a quorum here now, certainly. I suppose the distant members, those most interested in the matter, are mostly here. I am willing to take any course the Convention may indicate.

THE PRESIDENT. Do you withdraw it?

MR. VAN WINKLE. The Convention can vote whether it will take it up or not.

MR. BRUMFIELD. Mr. President, I would rather it would lie on the table till afternoon. Some gentlemen have gone home and not returned yet, and I think they will be in before noon.

MR. VAN WINKLE. I understand that the Federal court will have to have this room this afternoon, and it is not very probable that we have business before us that will last until afternoon. I will withdraw the motion for the present if gentlemen will give us a few minutes towards the recess time.

THE PRESIDENT. The Chair would remark that they have given us no notice, but the presumption is they will want the room after dinner.

MR. HALL of Marion. It might be withdrawn until such time as will give us time to dispose of it before the adjournment.

MR. VAN WINKLE. Well, I will withdraw it, sir.

MR. STEVENSON of Wood. Mr. President, as chairman of the Committee on Printing and Expenditures, I would like with the permission of the Convention to make a brief statement with reference to the publishing of the Debates of the Convention, if it thought proper to do it at this time.

Some time ago, sir, the Convention by resolution authorized the committee to enter into a contract for publishing the Debates of the Convention. The matter was delayed a little longer than probably it should have been for reasons that it is not necessary to state; but after consulting with a number of members of the Convention the committee thought it better to re-submit the matter to the Convention for their further action. The time probably which the Convention will be in session will be longer than was first anticipated, and of course the Debates will extend over the entire session—at least, to some extent—and that consideration and some others have induced the committee to think it prudent to bring the matter once more before—to your attention. I will state a few simple facts as briefly as I can, so that the Convention can exercise its judgment as to what is best to be done.

In the report which you will find—proposals, rather—in the copies of the Journals spread before you this morning, we have the bids of Messrs. Campbell & McDermott of the Intelligencer of this city, and of Messrs. Trowbridge & Downey. I need not go into details about it. In the first of these bids, that of the *Intelligencer*, they propose to furnish 500 copies of 250 pages for $970.62, at the rates for composition, printing, paper and so on, you will find in the bid. That is, 500 copies of 250 pages, and 1,000 copies of 250 pages for $1,156.00. But as the committee supposed the Debates would probably run over 250 pages they have received a bid from the same parties for 500 pages, 500 copies being $1,800.00 and 1,000 copies of 500 pages being $1,923.-22. The one thousand copies of 500 pages, I may state, would make the book of 500 pages cost $1.92 each—the binding to be in sheepskin. Messrs. Trowbridge & Downey in their bid at the same time propose to do the composition, presswork and find the paper; do the binding of 500 copies of 200 pages at the probable cost of $317.00, and for each additional 100 pages $57.00.

This, I may say does not include the reporting at all. They do not make any bid in this proposal for reporting the Debates but simply for the mechanical work. The setting up, binding, finding the paper, etc.

I will state here again that after we had received these proposals and submitted them to the Convention, and they were published, and after the Convention had authorized the committee to contract for publishing the Debates, we received another bid from Messrs. Trowbridge & Downey which if the Convention thinks it proper to take action on it will be for them to say. It was received after the others were received and acted upon. They propose in that bid to do the printing, folding, stitching and binding of 500 copies of 250 pages for $850.00 and for each additional 100 pages $60.00. That is the substance of the propositions which we have had and the facts as clearly as I can state them.

I will state here that an abstract report of the proceedings such as is published in the press—which I may say is a very excellent report as far as it goes—of course, it does not profess to make a full report of the proceedings—could be got in book form tolerably low. I may state also that Campbell & McDermott have employed or contracted with a gentleman about whose qualifications to make a full verbatim report I suppose there is no question; and they have by that contract the reports of the proceedings from the first day of the Convention up to the present time. That I know is the only complete report in the possession of any of the parties of the proceedings of this Convention.

That is about all the committee wish to state, and they would like the Convention to take some decided action this morning on the matter.

THE PRESIDENT. Is there any motion on the subject?

MR. STEVENSON of Wood. I neglected to state that I believe the bids for the transcribing, for the composition, presswork, paper and binding of the parties is about the same and is very low—as low I believe as it is possible to execute the work.

MR. VAN WINKLE. Suppose the committee make a motion.

MR. STEVENSON of Wood. Well if I could make a motion, and I suppose I may, as we have some new matter, to consider the present report of the committee. Or, if you like, I will renew the motion that the Convention take up the matter of publishing the proceedings of this body.

The President stated the motion to be to take up the question of publishing the proceedings of the Convention.

The motion was agreed to.

MR. VAN WINKLE. I understand this committee is hesitating what to do. They were directed and authorized by the Convention to make a contract for publishing the debates, not the proceedings. The proceedings are published in the Journal. There is no question of course, between an accurate and verbatim report and a mere synopsis. The synopsis we do not want. It may be important to have these debates for the justification of every member of this floor. That it may be truly known what ideas he has advocated, what principles, what measures, what propositions or articles or sections of the Constitution he has favored or not and his reasons for so doing. It is also important in another point of view, I think. When this Constitution goes out to these counties that we have determined to give the opportunity if they see it to come into the new State, it is important that they should have a copy of our debates in order that they may know the feeling and views that actuated the Convention and the principles that we have sought to embody in the Constitution. We are getting along pretty well, and if the thing is to be done, I confess something ought to be done at once. The question with the Convention is, do you want a full verbatim report of the debates here on these matters pertaining to the Constitution? It is a question only, I presume of expense. It is certainly usual for every body of this kind to have its debates reported and published. I do not think there is an instance in the United States where a Convention of this kind has ever sat where this has not been done. The debates of 1830 are still extant. The debates of 1850 were lost owing to the failure of the publisher—or something worse than failure.

The question that the committee want the Convention to give them final instructions about is, shall these debates be preserved in book form or shall they not?

MR. STUART of Doddridge. Mr. President, I for one, feel entirely willing to relieve this committee of any more trouble in this matter. I am decidedly opposed to the printing of the speeches of this body. I can see no good result from it at all. Now, the gentleman from Ohio (Wood) seems to think whatever we adopt here has got to be submitted to the people and they ought to have some light on it. Why, if our speeches here are printed in book form, there is not one in a hundred—in two hundred—people will ever want to see it or ever expect to see it. It will throw no light on the subject at all. It is incurring an expense of some two thousand dollars. In the Richmond convention they had their speeches published, paid for publishing them; and I don't suppose there is a member in this body that ever pretended to read many of the speeches made in that body that were published up to the time the convention went into secret session. I have them in the Richmond Enquirer laid away. I never expect to look at them; scarcely ever refer to them myself, and I know if I was to offer them to one of my constituents from their voluminous character he would be able to get nothing out of them that would be of any interest, and would never read them. I think, sir, it is an unnecessary expense; and even if our constituents were to read the speeches made here in order to enlighten them upon the questions they were to pass upon, a vast majority of our speeches were not on the questions which they would really have to pass upon. A great deal of it is a reiteration, and they would take no interest in it. The synopsis that is published by the two papers here in the city of Wheeling gives people some insight into our action and the views and principles of the Convention, and like the gentleman from Ohio (?) I am utterly opposed to publishing them, because it is not a fair report and would place many gentlemen in a wrong light before their constituents.

I simply got up to say that I would vote for relieving this committee from any contract at all, as I do not see any good growing out of it.

MR. BROWN of Kanawha. I confess this is one of the subjects, so far as the action of this committee is concerned, I feel myself very incompetent to determine. They referred that matter to the committee with a hope that the committee would investigate the matter and with a hope they would inform themselves and do whatever was right; and the only question now that I feel disposed to consider at all is whether we should print or not at all. And I confess, sir, while I should have no objection to having the matters printed, there are considerations on the ground of expense that strike me as serious objections. That the proceedings of this Convention will ever be read by the people, or any considerable portion of them, is not to be expected at all. The members of the Convention who have transacted the business will feel very little interest in ever reading them again and it will be very poor pay for them to attempt it. That it will be a considerable cost is manifest from the report of the committee; and when we consider, too, that this money is to be levied on the state—if I understand the legislature of Virginia must make provision for its payment, and acting as the legislature of the whole state, it would be levying it for the benefit of the few. And I do not believe, I confess, sir, from my experience debates of conventions heretofore, that it will ever pay any who undertake it. I remember in the convention of 1850 there was a paper started for the purpose of publishing the debates, and I tried to read it for a time and did read through a great many long speeches—I am happy to say this—until I broke down and got tired, and I believe the whole community did. I have never yet found a man that ever yet did read them through; and I believe the paper broke down in the middle of Governor Wise's speech. I remember hearing that Mr. Fisher, a lawyer of some note, was trying to find by circulating a paper through the country, a complete set of that paper publishing the debates, and I believe he entirely failed. It seems that there is not a complete number in the commonwealth extant. Well, after so memorable an example as that—it perished so quickly—I think it is hardly worth while for us to preserve the action of this body in that form. The great point is the success and excellency of the Constitution we prepare. After we have done it, I think the debates by which we arrived at it are immaterial and unimportant.

THE PRESIDENT. What disposition does the Convention propose to make of the question?

MR. BATTELLE. Mr. President, there are a great many books in the world that we do not any of us read clear through, and yet we would find it very difficult to get along without them. It may be a fact that former reports of bodies like this have not been read entirely through but by very few persons. That doesn't interfere at all with other facts that those reports have been read adequately, I may say, by a great many persons. The simple point is of their value as reference. And for one, I may say that I am in favor of this Convention taking such action as will secure the printing *in extenso* of the debates and proceedings here. I confess that I do not profess to be able to decide at all between the merits of any conflicting propositions and schemes. I should much rather trust the judgment of the committee in that way than to trust myself. But upon the simple point of whether the Convention will print or not I have in my own mind no hesitancy or doubt. And I think that these debates when printed will interest our whole people, will be eagerly sought after and will be very valuable for purposes both in the present and in the future. And I feel assured the Convention will not misinterpret my suggestion, because up to this point I have not been given to very extensive speech-making; but I have been, for one, extremely instructed and gratified by the discussions already had by the gentlemen all round me. I expect to be so still; and judging the people by myself—of whom I profess to be one—I suppose they will feel a like interest. In a single word, sir, I think there is no way in which this Convention could expend that amount of money that will be of more real service to our people throughout all the territory of the proposed new State both now and hereafter. There is no topic in which they feel the same interest today as they do in the proceedings of this Convention. I am, therefore, sir, in favor of the proposition to print. As I said before, I have not examined—perhaps I am not capable of examining, at least without much more investigation than I suppose any member is able to give who is not on the committee—I have not examined the merits of these competing claims and I should be disposed to be governed by the judgment of the committee whatever it might be, supposing that they give to the subject faithful and fair inquiry. But our people want light. It is the principal thing they do want; and I think they will sustain this body in taking such action as shall fully put their proceedings before them.

THE PRESIDENT. There is no direct motion. Will some gentleman make a motion?

MR. STEVENSON of Wood. My motion was simply to take the matter up and get an expression of the members. If any gentleman will make a motion to instruct the committee to have the proceedings printed—

MR. STUART of Doddridge. In order to bring the question before the body, I move that the committee be relieved from entering into the contract of publishing the debates; be discharged from further consideration.

THE PRESIDENT. The question is as to the discharge of the committee as to the matter of printing the debates of the Convention.

The motion was agreed to by a vote of ayes 19, noes 15.

MR. VAN WINKLE. I offer the following resolution:

RESOLVED, That the Committee on Printing and Expenditures report an estimate of the sum which will probably be required to pay the members and the officers and defray all other expenses of this Convention, based upon a probable session of sixty-five days, in order that the same may be laid before the legislature for their government.

I apprehend the resolution will explain itself. The legislature is bound to appropriate for the expenses of this Convention, and of course, they ought to know what amount we shall need. I supposed that in the natural course of things there would have been an application from that body to this. I presume they will not take upon themselves to estimate our expenses; and in view of the probable recess and other circumstances connected with it, I have thought, sir, it was better to take this course; that our committee can soon make an estimate, and that can be furnished, under direction of the Convention to the legislature.

MR. LAMB. It is true the estimate ought to be made large enough. No harm in making a large enough estimate; but I hope we have no idea of being here 65 days.

MR. VAN WINKLE. We have been here 21 days. Any gentleman can move to alter that if he chooses. There are five or six standing committees; one week has been occupied by the boundary question; one week might have been said to be occupied partly in preliminary; more than one week has been occupied on a partial report from one committee. Now comes up the report of the Executive Committee, the Judiciary Committee, the report on County Organization, the report on Taxation and Finance, and the schedule. That is six. I apprehend, sir, that less than one week to each of those would not be sufficient. It is that on which I have founded the calculation of 65 days—44 more days; that is, six weeks and two days. If gentlemen think that time is too long, they can alter it; but if that time will cover it, it may as well stand, because the legislature appropriates for a session of that length and if the money is not required it will simply remain in the treasury. If they appropriate for less than the expense, we might be embarrassed for want of an appropriation if they were not in session to rectify it. I do not think 65 days is going to vary very much from the result; but if it does, it will simply leave the money in the treasury.

MR. LAMB. In that view of the case there is no objection to the 65 days. If it more than coverss the expenses, the money remains in the treasury.

The resolution was adopted.

MR. VAN WINKLE. Well, sir, I suppose we can proceed to the order of the day.

The order of the day was taken up, it being the report of the Committee on Fundamental and General Provisions; but before proceeding to its consideration,

MR. STUART of Doddridge. I would suggest to the gentleman from Wood that he might move to take up the resolution in regard to a recess.

MR. VAN WINKLE. I move, in accordance with the suggestion of the gentleman from Doddridge, to call up the resolution in reference to a recess, and ask the Clerk to read the resolution.

The Secretary reported the resolution as follows:

"RESOLVED, That when this Convention adjourns on Saturday, the 21st of December, that it adjourns to reassemble on the 7th day of January, 1862, in the city of Wheeling."

The motion to take up the resolution was agreed to.

MR. VAN WINKLE. Without indicating anything on the subject I move to alter Saturday, the 21st to Friday the 20th, for the very obvious reason that if we sit until Saturday night none of us can get home until Monday. I hope the mover will accept the amendment.

MR. BRUMFIELD. I accept that amendment.

MR. STUART of Doddridge. I hope it may be the pleasure of this Convention that we will take a recess, and I appeal to all the old bachelors in the body, if there should be any, or young bachelors to extend that privilege here. I do not feel like breaking in on our social relations we have always had, and I look forward to the time in a few days when I can mingle with my family with joy and gladness in their faces. Sir, it is one of the pleasant moments of my life, and I hope this Convention will not deny me that privilege. If we stay here, what important action will be taken? But if the Convention decide to do so, I shall remain; because I would not shrink from my duty; but it would be with a sad heart, indeed, that I would go to my room if I know that I am deprived of the privilege of meeting my family during the holidays. I make the remark again, sir, that I hope this Convention will not be disposed to break in on our holiday relations which has become a second nature with us; and I will not hardly be prepared to transact business in this body if I am deprived of that privilege, severing that tie. My mind would always be wandering home to those that are near and dear to me. We will not gain much, sir, because I presume if we remain here that outside doings will carry off a great many of us. It will be a kind of recreation. We will return with renewed vigor of mind and body to engage in our business. I for one when I left my home, did not anticipate that I would be here longer than the time anticipated by the motion contemplated in the resolution. It is so, I presume, with many of the members of this body. In fact it was generally understood that we were to carry our Constitution here and submit it to the people on the 28th of this month. That cannot be reached, and that should not influence the mind of any member of this body. I hope it will be the pleasure of this body to take the recess.

MR. HALL of Marion. I trust, sir, this Convention will take no recess. I, like my friend from Doddridge, came here with a hope—I cannot say with a very well defined expectation—that we would be here as long as I apprehend we shall. I did not come here with any expectation that we were to complete our labors within the time prescribed by the former convention—that is, in the time necessary to allow us to submit our action to the people at the time prescribed; but when I consented to come here, I expected that be it long or short I would remain right at the post until we got through. I knew that the people expected it—that they desired no delay; and it is a matter of the utmost importance that we have as much time as possible between the consummation of our work here and the time the people are to vote upon it; and if we are to be circumscribed and controlled by influences and circumstances to submit the action of this Convention to the people for its consideration and action within a fixed time and that period not very far distant, having reference, of course, to the action of Congress, I think it would be a violation of every duty for us to occupy any time. In truth, sir, I would not consent to sit on the Sabbath; but I think there is no other time that we can call our own for purposes of pleasure or anything else. I know that it would be very agreeable—that personally I should desire very much to return home during the holidays, to take this recess. There are many considerations of a personal character that would lead me to take that course; but when I look at the necessity of doing what we are going to do, and having that before the people in order that they may consider it and that they may vote on a matter of so much importance with a knowledge of what they do, I do insist it would be a violation of every duty for us to go tie ourselves up for two weeks and let this whole matter stand still. Of how much importance would that be to the people in considering our action? Now, sir, the gentleman speaks of outside influences. He didn't mean outside pressure. He does not refer to that, I suppose; but that by the surroundings of the holidays we will not be able to accomplish much. Well, I don't think so. I don't think so. I think we can come here and work on every day. We may adjourn and not have a session on Christmas day; but I am ready to come here on that day and every day, Sundays excepted, until we get through. And I think it is very important that we should do it. If there are a few members who have come here expecting to return within a short time from the time of the commencement of our session, and their circumstances are such that they are bound to return, we may go on with our business notwithstanding their absence and in that way progress with our business. But I really trust that as many as can, and that a sufficient number, will remain here and take no recess whatever for any purpose. If we could move the time ahead when this was to be submitted to the people, I should think favorably of it. I should under any other circumstances favor it; but situated as we are, we ought not to do it. And I verily believe, sir, that when we consider our duties to the people we represent and the interest of the cause we profess to serve here, we cannot take a recess. I trust it will be the pleasure of the Convention not to do so—that we will remain here and work every hour and moment until we can accomplish what we are to accomplish in this matter and submit it to the people that they may be thinking on it and acting on it with a knowledge of what they are doing and should do.

MR. POMEROY. I just differ with the gentleman who has just taken his seat by hoping it will be the pleasure of this Convention to take a recess. I understand that the gentleman is somewhat differently situated from the rest of us, that he has his family here, while we have not (Merriment). I do not know how much influence that has had on the speech he has just made. I was in favor of the original motion but I believe the mover has accepted the amendment and I am still willing to agree to that to accommodate. It would suit me very well to adjourn on Saturday, but the question now before us is to adjourn on Friday and to meet on Tuesday, the 7th day of January, and I am decidedly in favor of that. If we sit during the holidays, we will not accomplish much, and I do not think there is a necessity for this house remaining with any such expectation. I hope, therefore, it will be the pleasure of this Convention to adjourn on the day specified. But I think it is just as well not to make any amendment to the motion now before us to adjourn on Friday to meet on Tuesday, the 7th of January.

MR. SINSEL. For fear this motion may pass, I will offer an amendment to change it to the 31st of this month.

MR. VAN WINKLE. You will take in the other holiday?

MR. SINSEL. O, we never pay any attention to it.

MR. VAN WINKLE. Yes, we do.

MR. MAHON. I was just going to state, sir, that I feel rather opposed to adjourning. Our people, my constituents, who sent me here anticipated, I am very sure, somewhere about this time to have had a completed Constitution, from us. There is no question about that. They anticipated this would be a short matter. They are very anxious to have this thing accomplished so that it may go before Congress; and it does seem to me that to return to our people, having a recess of fifteen days or such a matter, they will think we are very indifferent about this matter, and they will suppose that we do not take that interest that they take in this matter. Therefore I am decidedly in favor of continuing our labors.

MR. BROWN of Kanawha. Mr. President, while I confess, sir, that I acknowledge very readily this recess should be taken, at the same time if it is taken I desire at least that it be long enough to let us all go home and get back. The time proposed would occupy me traveling about the whole time. It would be but to look in and look out of home. I came here to work; and as the gentleman last on the floor has stated, we have disappointed the expectations of our people. People have looked on this work of framing a Constitution as a much lighter matter than we really find it, and I doubt very much whether any adjournment will meet the acquiescence of the popular mind. And then a continuance of the session to a much longer period than was contemplated for the

Convention to complete its work in the first instance. I am content to stay here and work until it is done. But if the Convention should be of the opinion it is advisable to take this recess, then I trust they will at least put it a day sooner and a few days later when we reassemble. A gentleman suggests if we start on Saturday we would be traveling on Sunday; but if we start on Friday some of us will have to do that, and I propose we start on Thursday if we start at all. In less than three days it would be impossible for me to get home. And then the probabilities are that I may not do it in less than four. So I move to amend now by inserting Thursday instead of Friday.

MR. BRUMFIELD. There is a great many of us have to go home by water, and as the gentleman offers an amendment to adjourn on Thursday, I would suggest that we will have no boat on that day by which we can go. Therefore we will have to lie over until Friday at least. When I started to this Convention, I only made preparation to be from home about three weeks—didn't know what action we should take on the Constitution; whether we should form a Constitution throughout or modify the old one to some extent, and therefore the preparation I made was to be at home about Christmas, and it may be necessary that I should be there. When Mr. Brown left home, I judge he did not calculate to be home so soon. He is a member of the legislature; and therefore, I hope the amendment will not prevail.

MR. VAN WINKLE. I will state my position on this matter again as I did when I first called it up this morning. Personally it is a matter of indifference to me, but I understand there are several gentlemen here who are in the condition of the gentleman from Wayne. That their calculation was for an absence shorter than it will be; now for myself, sir, I told my constituents that I had not the slightest idea of coming here to make a Constitution in two weeks—that if it could be made in that time, I did not want to have anything to do with it. And I think our experience so far tells us it is impossible to do such a thing. One gentleman who spoke to me on the subject some days ago told me it took him seven days to go home and seven days to come back; and if the Convention does take a recess I hope it will do it with a view to accommodate those who desire it. I suppose, sir, the pay ceases. I do not know how it is with the legislature—whether they will stop their own pay. The pay ceases. We will get nothing for traveling expenses. So it will not increase the expense of the session one dollar to take the adjournment. My impression is in reference to forwarding the business, that if we can get in the reports from committees this week and have them printed so as to get them home with us that we should come back here better prepared to dispatch business than we can be to go on with session, without that opportunity to look into the subject. And perhaps a little talk with the people at home will not be amiss. One thing I am pretty well convinced of—I have seen it tried—and that is that there will be no business done here or in the legislature if they both continue in session during the holiday week. Now, I will put that down as prophecy; that there will be no business done here that week.

Well, then, the question recurs: if we determine to take a recess, we had better accommodate as many of the members as possible; and it strikes me that the days as fixed in the resolution would give sufficient time to almost every one and would not be such a long delay as to delay the final proceedings of the Convention. My own impression is, sir, that if we go the whole 65 days, even then we can take time enough to let this Constitution be well understood by the people before they are called to vote. If it is understood—as it seems to be; not yet by any official act—that the legislature will hold an adjourned session for the purpose of acting on this Constitution, in reference to the counties lying east of the Alleghanies why, then, sir, the legislature will be in session for all purposes and can act on the Constitution and take the action that will be necessary in reference to those counties at the same time. I apprehend they could fix their extra session for that purpose with some degree of certainty.

As I stated before, if I can ascertain what the views of a majority are, I am willing to accede to them.

MR. HAYMOND. Mr. President, I am opposed to an adjournment. It is true I would like to return home and see my people; but they don't expect it. I am opposed to an adjournment.

MR. SINSEL. My reason for shortening the time is this: there are some of the members live at a distance off the railroad. They do not expect to return home, and they will be left over here all the time at heavy expense. I can go home in four hours, but such is not the case with many who live away out in the interior.

MR. BROWN of Kanawha. Is there no boat on Thursday? Then I withdraw the amendment for Thursday.

MR. VAN WINKLE. There is a boat that has for several weeks past gone on Thursday evening at five o'clock—the Bostona.

MR. BROWN of Kanawha. I withdraw the motion.

The question recurred on the adoption of the amendment of Mr. Sinsel, to adjourn until the 31st inst. instead of the 7th of January.

MR. HAGAR. Mr. President, I have an objection to the amendment offered by the gentleman from Taylor. When at home I live about 300 miles from here. And though I have not been at home for some seven months, it would be a pleasure to me to get to go home to Kanawha, for I would have some chance to hear from home. There are other members here who live about the same distance. They would like to get home if they can. If the amendment is adopted we cannot get to go home and back. It will consume all the time; and I hope the amendment will not be adopted.

The question being taken, the amendment was rejected, and the question recurred on the adoption of the resolution.

MR. HALL of Marion. So far as the amendment was concerned I voted for it, hoping by that means to have the cooperation of others to defeat the whole resolution; and I did it, not desiring if we have an adjournment to have it for the benefit of some without others and with a hope that because some could have it they would help us not to have any. I am satisfied of the statement of the gentleman from Wood that this would not increase the expense of the Convention; that is, that our pay would stop and our traveling expenses would be our own matter. But it is not in that view that I am opposed to this recess. Although that would be an item, I consider that the least of the considerations that should govern and influence us in our action on this matter. Now, sir, we came here with the expectation on the part of many of the people—although I stated my people thought as the gentleman from Wood did that it was all folly to think about making a Constitution and scattering it all over this country, particularly in some parts of it where the condition of affairs is such that some of the delegates have not been home for six months—it was impossible we should make and submit to the people a Constitution worthy of their consideration within the time prescribed. But I beg gentlemen to remember that we are here now and a period is fixed at which I know many gentlemen in this body will be urgent and all will be anxious that our action shall be submitted to the people and that they may act on it within a certain time. Now, I ask, if we are to go upon our short excursion for two weeks, consuming two weeks time when the people should be considering of our action, if any consideration ought to allow us to do so? The gentleman from Wood suggests, as it has been suggested before, if we remained here we might not accomplish much. Now, I do not know just how it is with others. I know, for one, I can work just as many hours and just as efficiently on the day before and the day after, and on Christmas day, and the same on New Years day, as I can any other time if there is a necessity for it. If there was no necessity for it, I would be as willing as any man not to do it; but I do insist and I must urge, that now, when every moment of time is worth so much, that we shall not consult our convenience or pleasure or anything but the great interest of the people. It is said I am not situated as some are because I brought my family with me. I did that for the very purpose that I might remain here. Others had the same privilege, and if they did not choose to do so, let them take the consequences (Laughter). But I propose to move as an amendment to this that members have leave to send for their families and that they shall visit them for two weeks (Laughter). I think in that way we could meet the end without any detriment to the public interest. But I do not speak for the sake of being heard in this matter. It is a matter of great moment; and if gentlemen are ready to take two weeks recess now and want the action by the people to be in a few days after we get through here, I shall ask them to be consistent and take it home to themselves and say that they have made it impossible for the people to act on this matter at the present session of Congress. I have no idea of throwing our action out to the people and saying to them it is no use for them to look over it and that they must take it as we give it to them. I have no such idea at all. The questions are difficult enough for us to settle among ourselves, and, with all proper respect, we must give the people time to see and consider these matters before they act. And I do insist that we have no time to lose at all. We should be up and doing; and we should be hasty—not in the way of being in such haste as not to do it right, but we should lose no time. I should be in favor, sir, if it were not for the fact we are so much engaged in committee labors yet, having night sessions, of occupying more time in Convention; but I trust we will whenever we are so disengaged from the labors on committees as that we can do it. But take now your fifteen days—I believe it is—and what do you lose? You lose more than the fifteen days. Before you get ready to work again you lose as much as you will lose by reason of the holiday times being about us. We all know you cannot pull up your stakes and go home and engage in the Christmas and New Years festivities and come back and go right to work again. I beg gentlemen to remember that we ought not to fritter away time unless we have it to spare; and I maintain we have not a moment to spare. I would be very glad if my friend from Doddridge and other members could be with their families at home. I would rather be with mine at home. But at the same time let us not do what we have no right to do. Let us not do what will vary from the expectation of our people; let us work right along and complete our work and then go home; and if we pass a special order that throughout the State of West Virginia Christmas shall be two months next year, we might postpone Christmas and New Years this year.

MR. STUART of Doddridge. I am like the gentleman from Marion: I seldom speak except when the spirit moves me. I don't speak, sir, for buncombe or effect at all. But I must again appeal to my friend and the members of this Convention who live in the vicinity of Wheeling, who can see their families—I appeal to them to extend to us a generosity that we will receive as a great favor. I will, at least. Now, the gentleman from Marion says it is true he brought his family and all members might do so. I understand the gentleman is not situated as some of us exactly in that respect (Laughter). We could deport our wives around; but that is not the object. I want to see and mingle with my little prattling ones.

MR. HALL of Marion. I dispersed mine around among my neighbors before I came (Laughter).

MR. STUART of Doddridge. The gentleman was peculiarly situated last winter even in the Richmond Convention. He took his family down there. Very convenient. Why, he remained there with John Letcher and Wise up to the time of adjournment. I suppose if they had not adjourned until today, he would be there yet, because he was accommodated in every respect, due to having his family there (Laughter). I think we should look to some members who came here with no expectation of having to remain over the holidays. We ought to consult their convenience in that respect. I am not willing to break down and break asunder our social relations in this matter. I appeal again to those gentlemen who are situated as my friend from Marion, even if they have got their wives here or can go home in two hours and back again. We are not so situated. You gentlemen who are closely situated do not know the inconvenience we labor under. I recollect that in all legislative bodies heretofore they have taken this recess. I have been at home and condemned them. But, sir, when it is brought home to me, I can appreciate it (Laughter). I can see the thing in its true light. I want to get home to see my little family; and we will do nothing, as remarked by my friend from Wood. We will do nothing here; and I think we will hasten the business by taking these reports home and considering them. We will come back better prepared to act on them. I am not so situated as my friend from Marion, and need deliberation. And it is necessary that we should take deliberation—at least, my friend requires it. Now, if I was like the gentleman in that respect, I might be willing to pitch in here and go through night and day; but, sir, I would not be satisfied with the result of my own acts. I think, sir, proper deliberation in this matter is required at our hands; and we have nothing to lose by the recess proposed.

We do it without any expense to the state; and if the gentleman has to go back to Marion and take his wife, I am willing to pass a resolution that the Convention will compensate him and providing that no unnecessary travel on him be put (Laughter).

MR. CASSADY. The gentleman from Doddridge in his first speech appealed to the old bachelors to vote with him. I for one intend doing so; but in his second speech he finds he has to take the other class (Laughter). I for one, sir, have intended if you do not take the recess, to ask for a continuance. When I left, I left for about thirty days. When I thought I would return to my business at Charleston; but since I find the session will be prolonged I shall certainly vote to have a continuation or recess. I cannot bring my family here. It is most too large a one, and some might be opposed to that move. I therefore will vote for a recess.

MR. HALL of Marion. I call for the yeas and nays.

MR. LAMB. I will ask to be excused from voting on this question. Though I would much prefer the Convention would go on with its work and get through at the shortest possible day, yet I am perfectly willing to leave the decision of the question with the parties who are more interested in it than I am.

The motion to excuse Mr. Lamb was agreed to.

The Secretary reported the resolution as follows:

"RESOLVED, That when this Convention adjourns on Friday, it will adjourn to reassemble on the 7th day of January, 1862, in the city of Wheeling."

The resolution was adopted by the following vote:

YEAS—Messrs. John Hall (President), Brooks, Brumfield, Battelle, Carskadon, Cassady, Dering, Dolly, Hansley, Hubbs, Hagar, Montague, Powell, Parker, Paxton, Pomeroy, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Stuart of Doddridge, Taylor, Van Winkle, Walker, Wilson—25.

NAYS—Messrs. Brown of Preston, Brown of Kanawha, Chapman, Dille, Hall of Marion, Haymond, Harrison, Irvine, Mahon, O'Brien, Parsons, Sinsel, Simmons, Warder—14.

The order of the day, the report of the Committee on Fundamental and General Provisions, was taken up.

THE PRESIDENT. When the Convention adjourned it had under consideration the 13th section of the report and the amendment, which was to strike out the second clause.

MR. HAYMOND. Mr. President, would it be in order to move a reconsideration of the first clause in section 13?

THE PRESIDENT. The gentleman might move to strike out the first clause.

MR. VAN WINKLE. The question is on striking out the whole. The question was made on striking out the whole on the ground that treason was not punishable by the state, and that motion was lost and the gentleman, who voted against it, now moves to reconsider it.

THE PRESIDENT. The gentleman from Marion moves, then, to reconsider the vote by which the striking out of the whole section was rejected.

MR. HAYMOND. Yes, sir.

MR. LAMB. The motion was my motion to strike out; was not made upon that ground at all, but upon the ground that the Constitution would be better without the provision than with it, that any constitutional provision on the subject of treason was entirely unnecessary. I made that motion, and so far as I have any opinion on the subject which has been debated, it is that there is treason against the state and that the state may punish it. I merely wish to explain the ground on which the motion was made.

MR. VAN WINKLE. I did not intend to do the gentleman from Ohio any injustice. I stated the ground of his motion as it was impressed on my mind. I suppose the question is now understood.

MR. PARKER. I think the gentleman from Marion who makes the motion to reconsider voted against. It must be some one, if I understand the rule that votes in favor. The motion was to strike out the section. The motion to reconsider that was rejected. That motion to reconsider should come from some one who voted in favor.

MR. BROWN of Kanawha. I desire to inquire if it is in order to move to reconsider when we have the other proposition before us to strike out the second clause.

MR. VAN WINKLE. That is the question submitted to the Convention: whether the Convention are willing to reconsider now. That is the very thing. Because if you strike out the whole any further debate on this clause must cease.

THE PRESIDENT. It struck the Chair there might be some question about that but he thinks it is the shortest mode to forward the business.

In answer to the gentleman from Cabell, the question was put on striking out the whole section. That was lost. A party who voted for striking out then could not move a reconsideration. But the reconsideration must come from a party who voted against striking out. The Chair understood the gentleman from Marion as having so voted. Was that correct?

MR. HAYMOND. Yes, sir.

THE PRESIDENT. The question is on the motion to reconsider; is the Convention ready for the question?

MR. HAYMOND. I am one of those, Mr. President, that believe that we have but one government and that government is the Federal Government, to which we are all bound to look for aid in case of rebellion in any part of the country. I believe the states forming this government are the mere wheels of this government, each one performing its duty to the government; and that to commit treason in any State is treason against the United States Government; and should there be rebellion in any state of this union it would be the duty of the said state to immediately inform the President of the United States of the existence of such rebellion that he may aid him, if necessary, in putting it down. Sir, when I look around my country and see the condition she is in at this time I cannot but think it would be well for us all to believe and to teach to the people that we have but one government. Sir, it has been the idea in Virginia and South Carolina for many years that they were independent states. In fact, Virginia has almost thought herself the Supreme Government of the United States. She has seldom ever permitted Congress to pass any important laws without first giving her instructions. Now, sir, I cannot believe in anything of this kind. I believe the government of the United States is the supreme government of the whole country. I do not believe, sir, that there is any such thing as treason against a state, but wherever there is treason committed it is against the government of the United States and not a part; and if necessary the whole power of this government must be employed in putting it down.

Mr. President, if we expect to succeed in obtaining a new State we must not apply to Congress to be admitted with powers we do not possess. I, therefore, ask this Convention to pause in their onward march for fear we may defeat the darling scheme of this new State.

These are my views, Mr. President; and I hope reconsideration will be adopted.

MR. BROWN of Kanawha. If the doctrine of the gentleman who has just taken his seat be the true doctrine, it seems to me the gentleman must feel himself in a very awkward position in being here attempting to construct a government for a state. If we are to have but one government in the United States, and that the Federal Government, our labors here are really idle. And, sir, should ever that doctrine prevail with the most people of this country, I must say that I honestly believe from that hour freedom will take its flight from this land; that the only guardians and bulwarks of American liberty are the state governments and the general government is only that superintending power that keeps those planets in their orbits and protects them against foreign invasion; that the liberties of the people are emphatically in the hands of the states; and it is the state governments only that come directly in immediate contact with the people that control a government and secure our rights and that determine all our relations between individuals. And it will be a dangerous doctrine to be promulgated, indeed, whenever that shall become common.

I, therefore, must oppose, as I opposed before, for the same reasons, this motion to reconsider.

MR. IRVINE. I voted against the proposition to strike out the 13th section. I have changed my views on that subject. Not for the reasons that I think treason cannot be committed against a state and be punished by a state, but for other and different reasons. What is the effect of the offenses described in the second sentence? The second sentence applies to the last clause of the first sentence. The first sentence is divided into two clauses, the last clause being, "Or adhering to its enemies, giving them aid or comfort." Now what is the effect of the second sentence? Is the second sentence to have the legal effect and operation to enlarge or restrict the second clause of the first sentence? I suppose that it was not the intention that the second sentence should have the legal effect to restrict or enlarge the operation of the second clause of the first sentence. But I suppose the intent was to so far explain the second clause as to include within the operation of the second clause the offences described in the second sentence now, the second clause is this: "Or in adhering to its enemies, giving them aid and comfort." The terms "aid and comfort" have been elaborately argued and construed by the best jurists in England. Those words have a very comprehensive meaning—the terms aid and comfort, giving aid and comfort. We can easily understand what is the meaning of the term "giving aid." That is very comprehensive; but it is easier understood than the expression "comfort." This is a very comprehensive word. Then the second clause of the first sentence has a very comprehensive meaning. Now, what is the effect which the second sentence has upon the second clause of the first sentence? "Every attempt to justify and uphold an armed invasion of the State, or an organized insurrection within the limits thereof, by publicly speaking, writing or printing, or the publishing or circulating of any such writing or printing, during the continuance of such invasion or insurrection, shall be deemed an adhering to the enemies of the State." Now, was it the intention of this second sentence to confine the meaning of the second clause of the first sentence exclusively to this mode of upholding and supporting a rebellion or insurrection? These two terms, "giving aid and comfort," adhering to the enemies by giving "aid and comfort," are much more comprehensive in their meaning than the second sentence; but according to all rules of construction, doesn't the second sentence have the legal effect and operation to limit the second clause of the first sentence to the offences described in the second sentence? If it has that effect, I am decidedly in favor of striking out the whole section. You can not shape this section so as to make it answer, I presume, the purpose that we intended to make this 13th section answer; because if you strike out the second sentence altogether, it may be doubtful whether the offences contained in the second sentence are comprehended by the second clause of the first sentence. The author of this, no doubt, entertains doubts himself whether the offences described in the second sentence was comprehended in the last clause of the first sentence. To remove all doubts about that they are expressly included. Now, if you strike out the second sentence—modify the 13th section by striking out this second sentence, then it remains doubtful whether the offences described in the second sentence are comprehended by the last clause of the first sentence. If you retain the second sentence—the whole clause without any modification—then it will be contended that the last clause of the first sentence is limited to the offences contained in the second sentence—that the legal effect and operation of the second sentence is to limit the last clause of the first sentence to the offences described in the second sentence. So that for these reasons, I am in favor of striking out the whole section.

THE PRESIDENT. The question is on the reconsideration.

MR. IRVINE. I presume to urge no argument on the reconsideration. That would not apply as an objection to the whole section. I am urging an argument now that would apply as an objection to the whole section; and if I cannot urge in support of a reconsideration arguments that would apply to the whole section in favor of striking out the whole section, I do not see that I can use any argument in favor of reconsideration.

THE PRESIDENT. The Chair did not desire to restrict the gentleman; but he got the impression—

MR. DILLE. I would suggest as a point of order whether the motion to reconsider brings up the original proposition. It seems to me to be out of order.

MR. IRVINE. I think that has been decided by all deliberative bodies—frequently elaborately argued, but finally decided—that in making a motion for reconsideration of a question, you can discuss the merits of the question. If you cannot discuss the merits you can hardly make any argument in favor of a reconsideration. What argument would you make in support of a reconsideration if you could not urge arguments touching the merits of the question?

THE PRESIDENT. Does the gentleman make a point of order?

MR. DILLE. I raised the question merely to understand the rule. I have not proposed to debate the subject. I merely make the inquiry.

THE PRESIDENT. Without some latitude allowed in debate it would be hard to show good grounds for a reconsideration; and yet, as a general policy it would be better to reserve lengthy arguments for the discussion upon the passage after the reconsideration. But the Chair is disposed to give latitude to the gentleman from Lewis without instructions from the Convention on the subject of reconsideration. Perhaps it is well to pursue the most liberal course on the question of reconsideration and allow some extent to the discussion on the merits of the question. If an appeal was taken from that, it would test the sense of the Convention.

MR. IRVINE. My reason for not waiting to urge those arguments after the vote had been taken on the question of reconsidering, is that I might not have an opportunity of urging them. I have an opportunity of urging them now on a motion for reconsideration and I urge them as reasons for reconsidering. If I wait until the vote is taken, the question may be lost and I may never have an opportunity of urging them. If there are any reasons for reconsidering, the same reasons would apply on the merits; and if I have any reasons to urge that are entitled to any weight, it is right and proper that the house should be in possession of those reasons. These are the reasons I have stated that will govern me.

As I was interrupted in my argument—though I ascribe no blame to any person—it will be necessary, perhaps, that I should recapitulate a little in order to present my views clearly before the house.

If it is a matter of any importance that the offences contained in the second sentence should be made treason, that might be effected by adding to the first sentence. It seems to me that if we adopt this 13th section in the form in which it now exists it will be contended that the second clause of the first sentence is restricted and limited to the class of offences described in the second sentence; that it will be contended that nothing constitutes an adhering to its enemies, giving aid and comfort, except the offences contained in the second sentence; that the second sentence has the legal effect and operation to restrict and limit the meaning of this last clause of the first sentence to the offences described in the second sentence. The members of the legal profession are well acquainted with the rules that would be applied for the purpose of restricting the meaning of the last clause of the first sentence to the offences described in the second sentence. Now if it has that effect, nothing can be punished as adhering to the enemies, giving them aid and comfort, but what is described in the second sentence. These words which are very comprehensive — which have been construed by the ablest judges that England ever produced—would be restricted and limited in their meaning to what is contained in the second sentence, when, in fact, they have a much more comprehensive meaning. Upon the ground that the *"Expressio unius est exclusio alterius,"*—I believe that is the old maxim —the expression of what is contained in this second sentence would exclude the application of the last clause in the first sentence to anything but what is contained in the second sentence.

These are some of my reasons for voting to exclude it. Well then, if you strike out the second sentence of this section, you leave it still in doubt whether the offences contained in the second sentence are comprehended under the last clause of the first sentence and then you cannot punish them at all. If it is decided that the offences contained in the second sentence are not included in the first sentence, you cannot punish those offences as treason for the reason that the statute says nothing else shall constitute treason. The legislature may think proper to enact the first sentence, and in addition to that enact a law corresponding with the second sentence so as to make everything contained in this 13th section punishable as treason.

These are my reasons, as I have stated, for my opposition to the section.

MR. STUART of Doddridge. I do not propose to argue the question at all, but it seems to me the gentleman's reasons can be met by voting to strike out the second clause. And that was the question that was before the house. If the offences embraced in the second clause of the first sentence are interpreted down here, why, his voting upon the motion to strike out the second clause will meet his object.

MR. IRVINE. I thought the motion was to strike out the whole section.

MR. VAN WINKLE. The motion that it is proposed to reconsider was a motion to strike out the whole.

MR. STUART of Doddridge. Yes, sir; but the gentleman offers as a reason to induce the Convention to reconsider, that he takes exceptions to the second section in the resolution; and by voting to strike out that second section—which was the motion before the body—he could meet his objections and leave the first clause as it has been interpreted by the courts heretofore. But I said I was not going to argue the question. It seems to me the committee who drafted this resolution considered that this question had been settled by the courts, but that certain offences here named had been, perhaps, a mooted question, and they desired to include it. I cannot see any other reason; because I presume our law of treason in the Constitution of the United States has been settled by the courts of England and, perhaps, to some extent, by the courts of the United States. But making this "Publicly speaking, writing or printing, or the publishing or circulating of such writing or printing" during the continuance of an invasion or insurrection, an "Adhering to the enemies of the State," is I apprehend—or must have been a mooted question which the committee desired to include as one of the offences defined as adhering to the enemy and giving aid in the Constitution of the United States.

MR. VAN WINKLE. The committee merely meant to make it certain that such speaking and writing as alluded to there should be deemed an adhering to the enemy. It did not exclude anything else that the courts did decide to be an adhering. It simply meant to make it certain that such acts as are mentioned in the second sentence should be deemed an adhering to the enemy.

MR. STUART of Doddridge. That was my idea—that the offences here embraced in the second section (?) were perhaps mooted questions and had not been decided by the courts or had been decided adversely to making this an adhering and giving aid to the enemy. Now, the section reads that "every attempt to justify and uphold an armed invasion of the State, or an organized insurrection within the limits thereof, by publicly speaking etc." This first proposes that there is an armed invasion or an insurrection. Then, sir, if there is such, I presume no man here will contend that printing, speaking, or publishing documents supporting that would be justifiable, and it ought to be made treason. I see no objection to it at all.

MR. LAMB. Mr. President, with the decision which the Convention made on the motion to strike out this section I certainly was disposed to acquiesce; and no act or suggestion of mine would have brought the question before the Convention for discussion, though I am very much obliged to the gentlemen who have moved the reconsideration on their own motion. I would wish to clear that question of one thing that seems to be connected with it in the views of members of the Convention, very unnecessarily. I do not want it understood at all that the members of the Convention who voted for striking out that clause hold to the doctrine that treason could not be committed against a state. That is not my opinion, so far as I have any opinion on the subject; and there is one view of the matter which, independent of authority, is conclusive to me on the subject; and that is, that if a government exists, whether it be state or United States Government, it follows as a matter of course that that government has the right of self defense. Self-defence is the great law of nature not only in reference to individuals but with reference to governments. And if a government has a right to sustain and uphold itself, it necessarily has the right to define and punish treason. The reason why I made the motion to strike out was, that the Constitution would be better, gentlemen, without the provision than with it. The government will have the same authority to punish treason without that provision in it that it will have with it. If you intend to limit the power of the legislature—the power of the state government—on the subject of treason, it is necessary then to put in something there for that purpose. But unless there is a limitation imposed in the Constitution, the government will have as full power as you can wish to give it. It is properly a matter of legislation not of constitutional enactment. It is a crime—a great crime—which stands at the head of the list in the criminal code. But why, in a constitution, where you are necessarily confined to a few brief general clauses—why undertake to define crimes and prescribe their punishment? Will not the legislature be as capable of acting wisely on that subject as we are? They can descend to all the details which is necessary to give precision to their enactment. They can prescribe the penalties in proportion to the offences; they can grade the severity of the punishment according to the magnitude of the crime. If you attempt to do anything of that, gentlemen, in the Constitution, you must insert a criminal code there.

Since I spoke before on this subject, I have made a further examination of American state constitutions in reference to the matter. There are four states out of 34 in whose constitutions I have found a provision on the subject of treason, identical with that—neither more nor less, any of them—identical with that which is found in the Constitution of the United States. But have the thirty states in whose Constitutions I have been able to find any provision on this subject—have they any treason laws? The gentleman from Cabell, the other day, cited you to the law of the State of Massachusetts and of the State of New York, as defining and punishing treason. You may find it on the statute book of every state, I believe, throughout the Union. Not in consequence of any provisions in their constitutions but because the omission of such provision from the constitution does not interfere at all with the proper definition or punishment of this offence. If, then, we are to take the example of our sister states in reference to this matter, we find that a very large majority of them deemed that the constitution would be better without this provision than with it. How is it in reference to your own constitution, gentleman? The Constitution of the State of Virginia, under which we are now acting, except so far as it has been altered by the ordinance for the reorganization of this government? Have you any constitutional provision there on the subject of treason? None whatever. Has Virginia, then, held the doctrine that there can be no treason against a state? Certainly not. From 1776, when I believe our treason act was first passed, by the legislature, down to the present time we have had a law defining and punishing treason upon our statute book without anything in the constitution in reference to it. It is said—and this is the only advantage I have heard suggested for putting the matter into the Constitution—that it may tend to give information to the people as to what is treason; that it might tend to warn them against the commission of certain acts. Gentlemen, are you not more likely to mislead them? They find one particular offence specified here as constituting treason—one particular case defined. May they not conclude that this thing of adhering to the enemies and giving them aid extends no further? I do not see after all the numerous cases which have been brought before the courts for the purpose of defining the meaning of those words "adhering" to enemies and "giving them aid and comfort," that the courts have rendered the words any plainer than they are. They are plain words. Any man can understand what adhering to the enemies of his country and giving them aid and comfort means. You cannot express it in plainer terms; and the terms, after all, mean just what a common man would take them to mean. If I support the rebellion and give it aid, it is treason. If I adhere to the enemies and give them aid, it is treason, whether I enlist in their armies; whether I furnish those armies with munitions of war; whether I supply them with provisions; or whether I aid them in any way. When the fact that a war is levied exists what plainer language could you use to give information to the people as to acts that are prohibited than to say, you shall not adhere to that rebellion and give it aid? It strikes me that your attempts at definition, at warning people, unless you see proper to go through all the details, which are spread over the law-books on this subject and specify each particular act which shall be deemed giving aid to an enemy, you had better leave it upon the plain terms which already give us the law of treason and to which any man applying his own good sense to the meaning of common language can give a reasonable construction.

The question was then taken on the motion to reconsider, and it was agreed to upon a rising vote by Ayes—18, Noes—17.

THE PRESIDENT. The question is on striking out the section.

MR. BROWN of Kanawha. Would it be in order to amend the motion to strike out the section? I move to amend by striking out all after the words in the second line "aid and comfort."

THE PRESIDENT. The Chair has no doubt about the amendment being in order; but if the proposition to strike out the whole section prevails, the amendment of the gentleman from Kanawha will be effected.

MR. HALL of Marion. While the question is pending to strike out the whole, have not the friends of the resolution as it stands a right to place it in the best position possible so as not to have it stricken out? I think any amendment is in order.

MR. VAN WINKLE. The effect of a vote to reconsider is to bring the house back to precisely where it was when this section was first taken up, and, of course, any motion whatever to amend it would then be in order. I mean we are where we were when the motion was made to strike out the whole. That motion is amendable in the first place and the motion of the gentleman from Kanawha is entirely in order. I find that a motion to reconsider takes precedence of any other motion except a motion for adjournment, and consequently the motion that was pending this morning to strike out the second section (?) is overtopped by the reconsideration.

MR. LAMB. Mr. President, the gentleman from Kanawha wants his amendment to be by a separate motion.

MR. VAN WINKLE. He made a motion to strike out the whole after certain words.

MR. LAMB. I would withdraw the motion to strike out just for that purpose. That will perhaps place the matter in a better position for the Convention to decide.

MR. HALL of Marion. Make it less complicated.

MR. VAN WINKLE. That does not make it any less complicated at all.

THE PRESIDENT. Does the gentleman from Kanawha make the motion to amend?

MR. BROWN of Kanawha. Yes, sir.

MR. STEVENSON of Wood. Would it be in order to make an amendment to insert? Well, I have no objections. I give notice, however, that I intend to offer an amendment to come in after the first clause in the 13th section.

"No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or upon confession in open court."

If it is not strictly in order, will not offer it now.

MR. BROWN of Kanawha. At the suggestion of a friend, I will withdraw my motion and offer another as an amendment, to strike out all after the word "aid and comfort" and insert, "but no person shall be convicted of treason except upon the testimony of two witnesses to the same overt act or by confession in open court."

MR. VAN WINKLE. I would state, sir, that those words were intended to be inserted by the committee, but were overlooked.

MR. STEVENSON of Wood. That is just the proposition I offered on the subject and it was ruled out of order.

MR. BROWN of Kanawha. I do not wish to appropriate the gentleman's motion.

MR. STEVENSON of Wood. I like to have the credit of my own amendments—that is all.

THE PRESIDENT. The Chair would, however, suggest that it would be much better for the members to content themselves with the motion to strike out.

MR. BROWN of Kanawha. I only wanted to get rid of a difficulty. To strike out and insert there can be no objection. I have no wish in the world to appropriate the honor of the views of the gentleman.

MR. PARKER. I will inquire, Mr. President, whether the gentleman from Kanawha intends to strike out the whole section after the word "comfort" or merely as far down as "treason," leaving the last clause? To strike out the second clause of the sentence?

MR. BROWN of Kanawha. I make that motion. I have not abandoned my preference for the resolution as it stood before; but I apprehend from the gentlemen of the Convention that there is a very strong probability of striking out all after "comfort" and therefore I desire to secure the first clause in the proposition; that treason shall consist only in levying war against the State and in adhering to its enemies giving them aid and comfort, with the addition of the words taken from the Constitution of the United States "But no person shall be convicted of treason except on the testimony of two witnesses to the same overt act or by confession in open court." And if gentlemen desire to test the sense of the Convention on the other clause, they can move it as an independent amendment.

MR. PARKER. I would move, then, as an amendment to the amendment, that the section be stricken out after the words "aid and comfort" as far as "treason"—that is, the second clause of the sentence, leaving the last clause, graduating the punishment of treason to suit the particular acts, still in.

MR. VAN WINKLE. Mr. President, I do not know what we are doing. We are getting here motion on motion and motions withdrawn, until we are back precisely where we were this morning, with the exception of the case suggested by my colleague. The gentleman from Ohio should not have withdrawn his motion. If they decide to retain this we are brought back to the second clause. After we have passed upon the second, we will go to the third, and then a motion to make an addition to it would be very properly in order. The dinner hour is very rapidly approaching, and we do not certainly want to spend another day on this section.

MR. LAMB. I suggest to the gentleman from Cabell to withdraw his motion and to allow the Convention to act on the motion of the gentleman from Kanawha. The motion of the gentleman from Cabell can be moved after it is decided and much better than at present. If that motion of the gentleman from Kanawha is adopted, it will be perfectly competent for the gentleman from Cabell to move his amendment then.

MR. STUART of Doddridge. After the motion of the gentleman from Kanawha is stricken out?

MR. VAN WINKLE. The motion of the gentleman from Ohio was withdrawn without the leave of the house, and therefore is not withdrawn. I think if we were going on in strict order we proceed upon the motion of the gentleman from Ohio, and that was to strike out the whole. If the Convention decide to do that, then it is in order to make a motion to strike out any other part; and then it is in order to move to insert. I suggest now as the best way to get out of the complication we are in—for I don't think the Clerk can now state what is before the house—that we go back to where we were when we voted the reconsideration and let the question now be put whether the Convention is in favor of striking out the whole or not simply by itself. If that is carried one way or the other, we know precisely what to do and keep out of confusion.

MR. BROWN of Kanawha. I have no objection to that. I will withdraw the motion.

MR. VAN WINKLE. If that is the sense of the Convention, we need bother no more about the clause.

The question on striking out the whole section was then taken by Ayes and Noes, and the motion to strike out was lost.

MR. VAN WINKLE. Now, sir, we get back in order to the motion that was pending this morning, to strike out the second clause. The motion to reconsider has been disposed of, and that is the motion that was pending.

THE PRESIDENT. The question is on striking out the second clause.

MR. STEVENSON of Wood. I was only going to suggest that I would not offer this amendment at any time if the committee would so modify their report as to consider it a part of it; but I will do anything with it at present.

MR. STUART. The hour of recess will soon arrive.

MR. VAN WINKLE. We will have to adjourn. The court is to sit here this afternoon.

MR. STUART of Doddridge. Some of the members have to trot up here and then go to another establishment.

I am opposed to striking out, and desire to offer some reasons why I was opposed to it; but I do not want to intrude upon this Convention at all.

MR. VAN WINKLE. I move an adjournment. I suppose, sir, there is no other news on the subject of the court. This is the day appointed for holding it.

THE PRESIDENT. It was stated that other provisions had been made for the court. If it came here at all, it would only come here to adjourn to another house.

MR. VAN WINKLE. If that is the case, then we can hold an afternoon session. I will let it go as a recess and not move an adjournment as I proposed.

THE PRESIDENT. The hour having arrived for a recess, the Chair will be vacated until half-past three o'clock.

THREE-THIRTY O'CLOCK, P. M.

The Convention reassembled at the appointed hour, the President in the chair.

THE PRESIDENT. When the Convention took a recess the question under consideration was the amendment of the gentleman from Ohio to the 13th section of the report from the Committee on Fundamental and General Provisions.

MR. STEVENSON of Wood. I would like to hear the amendment read.

The Secretary reported it to be the motion made by Mr. Paxton to strike out the second sentence.

On that motion the question was then taken by Ayes and Noes and it was agreed to by: Ayes—15; Noes—11.

MR. STEVENSON of Wood. If it be in order now, Mr. President, I would offer this amendment. It has been suggested that it had better be put on the third clause. I have no objections to that, though I thought this would be proper now.

Well, then, I would offer this amendment, Mr. President, to come in at the end of the first sentence.

"No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or confession in open court."

MR. VAN WINKLE. I stated in the morning session, I believe, that that was intended to be put in by the committee, but it was overlooked at the right time.

The amendment was adopted.

MR. VAN WINKLE. The question is, now, I believe, on the adoption of the section as amended. There was no understanding about considering it in clauses. Any gentleman can move to strike out if he doesn't like it.

MR. PARKER. I understand that the second clause is stricken out—that the amendment of the gentleman from Wood is adopted. I would now move to add the last clause as an amendment to the section: "Treason shall be punished according to the character of the acts committed, etc."

MR. VAN WINKLE. If no motion is made to strike it out it will remain.

MR. PARKER. Very well.

The question was then taken on the section as amended, and it was adopted.

The 14th section was taken up and reported by the Secretary as follows:

"Sec. 14. No lottery shall be authorized by law; and the buying, selling or transferring of tickets or chances in any lottery shall be prohibited."

The question was taken on this section and it was adopted.

MR. VAN WINKLE. The Convention has now gone through the report as far as made. I must, therefore, move, sir, as chairman of the committee, that the report as amended lie on the table for the present, with a view that when the residue of the report comes in the question will then be taken on the whole report.

MR. PARKER. Mr. President, two sections were passed over on Saturday, I think.

MR. VAN WINKLE. They were passed by for the action of the committee. The gentleman from Cabell will pardon me, they were passed by, both of them, at the request of the committee. I believe sir, that instead of moving to lie on the table, I will move that it be recommitted as amended, and then we can bring the balance and this all in at once.

The motion to recommit was agreed to.

MR. SHEETS. If there is nothing before the Convention, I move that the vote we had this morning on the printing be reconsidered. There are a number of gentlemen not present this morning who are here now, and they desire it reconsidered.

The President stated the question.

MR. POMEROY. I can only say that I hope it will be the pleasure of the Convention to reconsider. There was quite a number absent and quite a number of those in the house did not vote. But I hope those who voted against the motion will be kind enough to vote to reconsider and let the matter come up before the Convention.

The motion to reconsider was agreed to.

The Secretary reported the resolution:

"RESOLVED, That the Committee on Printing and Expenditures be discharged from further consideration of the subject of publishing the debates."

MR. VAN WINKLE. Well, sir, by a previous vote of the Convention the committee were authorized to contract for reporting and printing of the debates in book form; and now that the order made this morning has been reconsidered that is the standing order of the house on the subject. The committee, however, as I understood the chairman this morning, were desirous of having an expression of the Convention on the subject, and the motion that was passed this morning and has now been reconsidered is pending. That is, that the motion is now that the committee be discharged from further consideration of the subject. If that motion prevails, of course there will be no printing of the debates. If that resolution is lost, then the committee, I apprehend, will act on their former instructions.

I do not know that I can add anything to what I have already said on this subject. I am very anxious these debates should be preserved. I am very sure it is not because I have any personal object in it, in longing to see myself in print. I have seen myself there very often. But it strikes me this first solemn act towards the erection of a new State—the first action it has taken on its own behalf; because the act of the convention providing for this body was an act of the old state—ought to be recorded. We are in what we have already done here, repassing, as it were, certain grave fundamental principles of government which have more or less received the sanction of a great portion of the people of the United States. Many of them are engrafted in our National Constitution, and of course we all uphold them, sir. It has been necessary, of course, to make some slight deviations from them, in some cases where the language has been slightly changed in order to cover cases formerly unforeseen; but we are speedily coming to those things which will make a total change in the organization in the counties if not of the State itself. There will be more changes, I apprehend, when we get the reports from the other standing committees, changes that are rendered inevitably necessary by the change in our condition. We propose to separate from the old State of Virginia because, as we allege, its institutions are not adapted to our condition and wants. I do not allude to the "peculiar institution," at all in making that remark, but that their community is a different one from ours. There is not so much practical equality among the citizens; their wants are different from ours. They are occupying a comparatively old and settled country; we are occupying a new and unimproved country. Our commercial interests lie in one direction; their's in another. All these things will render important changes necessary from the old Constitution and organization of the State. Now, sir, every member must feel that he would like not only his constituents who sent him here—those who will be at the polls to vote on this Constitution, but those who are to succeed them as the voters of this State, to know what reasons they have been that governed us in making these changes which we must make. It will also, sir, be important for the governor, and the legislature themselves, when they come to put this new Constitution into execution, that they should have something to refer to by which they would understand what it was that actuated the members of this Convention in making the Constitution now proposed. Well, sir, if our opinions are to be canvassed not only by the people of this State but throughout the United States—if they meet with any discussion at all—we would certainly like—and every member here has that interest in it; for although there are some members who do not take an active part, yet by giving their votes they assent to what is said; if a question comes up here and is advocated on certain grounds or opposed on the other, the gentleman who votes for one or the other assents to a certain extent, to the reasons that have been given in debate as the foundation of the vote he gives himself, and therefore he has as much interest that the thing should be properly reported as those who enter more actively into the debates. I think, sir, also, as this thing has been customary with all conventions of which I have any knowledge whatever, as in fact a considerable amount of information will necessarily be produced before this Convention—as members are aware a great deal has already by the researches of individual members; every member has had matters brought to his attention which he is glad to learn; it is the great characteristic of every deliberative body that it makes the knowledge of every individual member, which might not be very much in each individual case but which is considerable when it comes to be aggregated—it makes his knowledge the knowledge of the whole convention. And, sir, we learn nothing in this world, we make no progress in knowledge of any kind except from our own experience or that of others. What we know, what we see, what we experience, of course becomes our own. The information or experience of others we can only get from their lips or writings; and, sir, humbly as we may think of ourselves, I think that those who are to succeed us in the management of this State —or who will be the managers of this State, to succeed us in carrying on the government of this State, would like such a publication to refer to as a sort of manual, in order that the principles that governed the Convention, and which if the Constitution is adopted will be the principles of the Constitution—in order that they may be familiar with those principles. Their practical operation, no doubt, will be detailed by members who have occasion to statute them elsewhere; and much information of that kind will be embodied which will be valuable.

I have spoken in favor of this two or three times. I have been forced by the position I have occupied as chairman of two or three committees to occupy this floor considerable; but when that is through I hope to subside; and the charge might as well be brought against me as against any other member that I want to see myself in print; but such charges do not move me, and I hope will have no effect on any other member. The cost of this is not great. It is true a thousand dollars or twelve hundred dollars is a large sum when looked at merely as a sum of money; but when you consider what will be the whole expense of this Convention—what we are necessarily paying for printing which will be of an ephemeral character, you will find it is a small sum; and if you take the whole sum and compute it with the benefits which I apprehend from it, I apprehend, sir, no one—not even our economical legislature—could justly find fault with us for going into any extravagant expense. Our sufficient answer to any charges of that kind that may be brought against us—our sufficient justification is that in all bodies of the kind the debates are preserved in this way.

MR. STUART of Doddridge. I do not know that I would want to say anything at all, if this was a proposition to publish these debates and send them broadcast over the country so that the people would get to see them, and have light on the subject they are called to pass on in a few days when we submit our Constitution to them. There would then be a propriety in it; but, sir, this is simply a resolution here for the purpose of publishing these debates and for pressing them and putting them up in book form for the special benefit of this Convention and a few of their friends. Now, I do not say that any person has such a motive, but that is the effect of it. The people at large will not see these debates. They will not buy this book for the purpose. We will get it and a few just about you. Well, sir, what light will the community get upon the subjects discussed here in that way, I would ask? Now, sirs, it has been the habit of former conventions in our state to publish their debates. Those debates have been published in the Journals of the day and scattered broadcast over the commonwealth for every man to see and read. Well, that is not the proposition here at all. If the members desire, sir, to see these debates and read them in after times let them get them published and pay for them, but do not ask the state to pay for these things that is to be an exclusive benefit for the few. Now, the debates of the convention of 1850 were published in the journals of Richmond, two of them, I believe, and spread broadcast. Well, for a while, sir, the community took some interest in it. Well, they got tired of it; did not read them and after a while they became so voluminous that the presses broke down.

MR. VAN WINKLE. They were published in a sheet and furnished to every newspaper in the state and circulated as supplements with those papers. But independent of them there was a publication that had advanced to some sixty or seventy pages when I left there, in book form, and that was what was intended for preservation. I myself gave a gentleman who wanted to make up a complete list of the newspaper publication numbers of mine thinking I would have my copies of the book when it came; but owing to the failure or rascality of the publisher we never got them. While I am up I will state the distribution of these. Each member will probably have two copies, one sent to the Clerk's office; they will be deposited in public libraries, if there are such things, and would be where they are accessible for those who wanted to see them. The argument the gentleman has used would apply to every publication of the kind. Why, Congress orders 30,000 of a publication, and because it is not equal to the entire population of the country it is of no use!

MR. STUART of Doddridge. Well, sir, the gentleman's recollection of the debates of '50 is exactly my own. These papers were paid for, to be distributed over the country; and when they saw the voluminous character of these books, and the large amount the state would have to pay for them—

MR. VAN WINKLE. Walters—or Waters—got the money and put it into his pocket.

MR. STUART of Doddridge. He retained them until I got tired of them. But that is not so objectionable as our present resolution. That was, Mr. President, buying these papers for giving information to the people. But as it is to be peculiarly for the benefit of this body, if we desire to see our debate published in book form, and want the book, we ought to buy it and pay for it just as other citizens will have to do if they want it. We may send one out and stick it up in the Clerk's office of the various counties. Why, it is not the citizen can go in there and examine that thing —never expect to? It may be a benefit to a few of the lawyers and these men who desire this information ought to pay for it. I don't want the reporters to put me on paper with regard to this matter. My friend from Marion might charge me with buncombe. I have become wearied and tired of these debates in former Conventions. I have never had occasion to refer to them. I think it is an unnecessary expense. I am honest in my opinion, and desire that the resolution would pass.

MR. POMEROY. One reason that operates on my mind and influences me to favor this motion is one that I have not heard mentioned, and that is: These are troublesome times and peculiar times. There are many if not all the members on this floor that are very likely to be misrepresented by a class of men that live in their neighborhood, in the immediate vicinity of their own residence; and I think for this reason alone, we ought to have these debates printed in book form and bound up and preserved, not only for our own benefit and the benefit of our constituents but as it has been very well said by the gentleman from Wood for those that are to come after. And I think the cost will be very trifling when compared with the value and, in fact, so far as I recollect, unless it is in the case referred to by the gentlemen of the Convention in the convention of 1850, it has been customary in all the states. I know in Pennsylvania the debates in the convention that amended their constitution in '37-8 make a number of volumes that are printed and found in all the libraries of the state. In the colleges and institutions of learning they have got a copy of this work and have preserved it. And as has been said, if there is a copy placed in the Clerk's office that is a place of public resort. The Clerk's office is generally open and men come in there when they have leisure and they will read; and when men are misrepresented in regard to the position they occupied on this floor, they can set themselves right by referring to the debate and reading for themselves and learning the position that men occupied. And in fact, we derive no knowledge but what we have to pay for —but what costs us money, more or less. But I cannot for the life of me see why my friend from Doddridge should be opposed to this thing. I think if the Convention looked upon it in its true light, they would be favorable to this motion. The legislature has it in their power to take the responsibility of refusing the small amount that it would require. The responsibility would be there. But I think we would act unwisely if we would not be in favor of publishing these debates.

MR. HARRISON. I should very much desire, sir, that the proceedings of this Convention should be printed, and probably in book form; and perhaps our constituents would like to have the same course pursued, but there are other considerations, sir, which at this time that induce me to believe we ought not to have them published. As the gentleman from Hancock has said, these are peculiar times. We may be misrepresented. There are men living near us who will avail themselves of their opportunity to misrepresent us. That all may be true enough. But, sir, when we consider the expenses that the new State will necessarily incur in getting into operation; when we consider the fact that this matter is an expensive one to us; and when we recollect that some of the counties in the southern portion of the new State have been devastated by war and by conflicts till the people there are absolutely in want; when the people, sir, of this community are called on to contribute from their private purses to aid in supporting the families of our soldiers and such of them also as may be sick; the direct taxes also to be paid to the United States Government; the large debt which may fall upon us as our portion of the state debt of Virginia; and the fact that the people who sent us here, as I believe, had no idea that we would consume anything like the time this Convention has consumed, thereby increasing the expenses largely above what was estimated—I think when these considerations are brought to our minds that perhaps we ought not to go to the expense of printing these debates. It strikes me in setting out with this new State of ours there is no better rule we can adopt than one of economy. It is true it has been the custom of all similar bodies to print their debates, publish and preserve them; but I believe nearly all the debates that we have access to now that are printed are those of conventions which have been sitting in old, well established states. I do not know whether we have the debates of all the conventions that sat in Virginia or not. The last one it seems were lost; the debates of 1830 are preserved; and as some one remarked yesterday, no one ever read them.

I think, sir, these considerations should influence this Convention not to take on themselves the responsibility of ordering the printing of these debates. It might be left to the legislature to take the responsibility. They will have to appropriate anyhow to meet our bills.

MR. STEVENSON of Wood. I wish to add, Mr. Chairman, one argument that it seems to me a good one in favor of preserving in an official way the proceedings of this Convention, particularly the debates, that has not been alluded to by any of the gentlemen who have spoken. And that is this: that if we succeed in establishing this new State, as I hope we will, in the course of a few years—fifteen or twenty, or probably less—it will be necessary to modify or change this Constitution on which we debate now. Such has been the history of all the other states. They have all changed or modified in some way the constitutions which they first adopted, without any or with very few exceptions if there are any. And it seems to me that for a convention assembling some ten or fifteen or twenty years from this time to make a constitution, to frame an organic law for this State as it will be then, may find some difficulty if they have no official record of the proceedings of the first Convention which made the first Constitution for the State. If they should desire anything of that kind, then they probably cannot get it. If we should desire it at the end of a year from this time, the probability is that we could not get a report of our proceedings. It seems to me it would be very important—very useful at least to the members and to any subsequent constitutional convention if they could have a reference to an official record of the sayings and doings of this Convention on all the questions and on all the provisions that they incorporated in this first Constitution. That has not been alluded to, and it seems to be in my mind the strongest consideration I could urge in favor of an official record of our proceedings.

MR. STUART of Doddridge. I would like to call the gentleman's attention to the fact that they appear to entirely overlook that we have a Journal of our proceedings, which gives every bill, every vote, and that is furnished to us anyhow, so that you cannot be misconstrued or misplaced.

MR. STEVENSON of Wood. It doesn't give the facts that are stated in reference to these debates. It is simply a record of business.

The question was taken and resulted: Ayes—19, Noes—18. So the motion to discharge the committee was agreed to.

Though before an announcement was made by the Chair.

MR. DERING. I rose in the first place, not understanding the proposition. I sat down—

MR. VAN WINKLE. I move the gentleman have an opportunity to change his vote.

A member called for the yeas and nays.

MR. VAN WINKLE. I trust we will not mistake again. There is a motion pending to discharge the committee from the further consideration of the subject. If that resolution passes, then there will be no debates printed. If that resolution fails, then the committee will go on and contract for the reporting and printing of the debates.

The question was taken by yeas and nays and resulted:

YEAS—Messrs. John Hall (President), Brooks, Brumfield, Chapman, Cassady, Dille, Dolly, Hall of Marion, Harrison, Hagar, Irvine, Lamb, Montague, Mahon, O'Brien, Parsons, Powell, Parker, Simmons, Stuart of Doddridge, Taylor, Walker, Wilson—23.

NAYS—Messrs. Battelle, Carskadon, Dering, Hansley, Haymond, Hubbs, Hervey, Paxton, Pomeroy, Sinsel, Stevenson of Wood, Stuart of Wirt, Sheets, Soper, Van Winkle, Warder—16.

So the resolution was adopted and the committee discharged.

MR. LAMB. There are, Mr. President, two resolutions reported by the legislative committee if the Convention has nothing else under consideration would now come up in order—resolutions in regard to the Congressional apportionment. I ask that they be read and would simply remark that they are the same provisions which exist in our present constitution on that subject.

The Secretary reported them as follows:

"Sec. 13. The whole number of members to which the State may at any time be entitled in the House of Representatives of the United States, shall be apportioned as nearly as may be among the several counties, cities and towns of the State, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

"Sec. 14. In the apportionment, the State shall be divided into districts, corresponding in number with the representatives to which it may be entitled in the House of Representatives of the Congress of the United States, which shall be formed respectively of contiguous counties, cities and towns, be compact, and include, as nearly as may be, an equal number of the population, upon which is based representation in the House of Representatives of the United States."

MR. LAMB. I move to strike out the words "cities and towns" in both resolutions as unnecessary.

THE PRESIDENT. Does the gentleman consider the resolutions now up? Or do they not require a resolution to take them up?

MR. LAMB. Reports are considered in the order in which they are made. It is a mere verbal correction to strike out the words "cities and towns" in both resolutions. The Convention are aware that they have in the east cities and towns as political divisions of the state. We have nothing of the kind in the west. Our representation here is altogether by counties. The words are unnecessary in either resolution.

The motion to strike out was agreed to.

MR. LAMB. I move the adoption of the first resolution.

MR. HERVEY. I apprehend that some of the members do not know what the resolution is.

The Secretary again reported section 13, and the question being taken on it, it was adopted.

MR. LAMB. I move the adoption of the next resolution.

The Secretary reported section 14.

MR. STUART of Doddridge. I would like to inquire how it is we come down to section 13 of the report.

MR. LAMB. That is a mere reference to the present constitution the numbering has nothing to do with our report. It is a mere reference to the present Constitution of the State of Virginia.

MR. VAN WINKLE. As I understand it, the Convention are now adopting provisions that are to go into the Constitution. We have already adopted one. This one follows it. That will also go into the new Constitution. They are precisely the same as are in the present constitution of the state and are the only way in which Congressional apportionment can be made under United States laws. We cannot change it, the legislature is the body that apportions representation.

MR. DILLE. I simply desire to make one inquiry: whether it is necessary that there should be a provision here for the apportionment?

MR. LAMB. The reapportionment is, of course, regulated by Congress under the act of Congress, the reapportionment would have to be made for the State of Virginia between this time and the fourth of March, 1863. But it is none of our business. The Convention but executes the expression of Congress in making that apportionment. All the Convention can do is to describe the certain principles on which the legislature may make that reapportionment when the new State is in existence.

The question was taken and section 14 adopted.

MR. VAN WINKLE. I understand the only thing now before the Convention for action is the report of the Executive Committee. The chairman of that committee is absent and I do not know whether he has left any other word with any member of the committee, but he told me on Saturday he did not wish it to be considered in his absence. It is not necessary to explain the reason why and as there is nothing before the Convention, sir, I will avail myself of the opportunity to ask the Committee on County Organization to meet this evening at half past six if it is convenient to them at our room, and then move the adjournment.

MR. LAMB. Before the question is put on the motion to adjourn, I beg leave to say that the Committee on the Legislative Department are to meet at their room this evening at half past six.

MR. STUART of Doddridge. In the absence of the chairman of the Committee on the Judiciary Department—

MR. HALL of Marion. I desire the Committee on the Schedule to meet tonight at some of the committee rooms provided across the street at seven o'clock.

MR. LAMB. I move, Mr. Chairman, that when this Convention adjourns, it adjourn to meet tomorrow at eleven. As long as the preparation of reports is the main business it would be better that the Convention meet at eleven o'clock instead of ten so as to allow committees meeting in the morning instead of evening. It is necessary for some of the committees to meet at one time and some at another.

MR. STUART of Doddridge. I hope the motion will prevail because really the committees have not time to act. We get down here at nine o'clock, and against we get into committee, it is Convention hour and we are unable to act. It would be much better.

MR. VAN WINKLE. Probably the committees may have their final meeting tonight on some reports. Or at any rate, we will be ready to report to the Convention by tomorrow; and if those committees sit till bed-time, and the chairmen have the additional hour in the morning they can come in here tomorrow and then they will have to be printed. It will take a day, of course. If the report of the Committee on the Executive Department is ready tomorrow, we shall have something to do, and if it doesn't we will not. So the probability is we shall have to adjourn at an early hour. I think the motion as stated will save time rather than waste it.

The motion made by Mr. Lamb was agreed to.

MR. STEVENSON of Wood. Mr. President, I am going to say, as we have a vacant hour that there was some of the officers employed by the present Convention whose salary is not fixed by any resolution of this body—pages, door-keepers and probably some others. I think it might be well to make a motion that the salaries of those officers and any others not fixed, should be the same of those of the last Convention. I make that motion for the purpose of bringing the matter before the Convention.

Several members inquired what was the pay of the last Convention.

MR. STEVENSON of Wood. I do not know, sir, what it is.

MR. VAN WINKLE. It is only one or two officers and the boys. And it would not make much difference if they got twice as much as they ought to get.

The motion was agreed to.

MR. STEVENSON of Wood. Well, sir, I move we adjourn, if we have nothing else to do.

The motion prevailed and the Convention adjourned.

XVIII. TUESDAY, DECEMBER 17, 1861.

The Convention assembled at the appointed hour.
The minutes were read without objection.

MR. LAMB. Mr. President—

THE PRESIDENT. If the gentleman will wait a moment until the President signs the Journals.

MR. LAMB (after an interval). I am instructed by the Committee on the Legislative Department to submit their second report.

In submitting this report I trust the Convention will indulge me in a remark or two. I cannot say—and I suppose there is no member of the committee can say—that I approve entirely of everything contained in the report; but we have found during the progress of the consideration of this subject the necessity for compromise. If each one were to adhere rigidly to his own motion, it would be impossible in any reasonable time—if at all—to propose a constitution to the people of West Virginia. We have found another thing: The great difficulty which is inherent in the very nature of the subject. Our constituents are perhaps not duly advised of this matter. Every one almost would consider that he could form a constitution for the State with very little difficulty. Yet without consideration. To take to pieces the frame of government and put it together, each one in its proper place, and each provision to operate properly, is a work of immense difficulty. Another consideration I mention in regard to this report: we have appointed a Committee on Fundamental Principles, a Committee on the Legislative Department, a Committee on the Executive, and other committees, to whom the various branches of the Constitution have been entrusted. It is impossible to define with any precision, in many instances what comes more properly within the sphere of one committee or the other. There is nothing, in one sense of the term, which is to be provided in the Constitution but what must involve some fundamental and general principles and may affect the executive, judiciary or other department so it is in regard to the matter of this committee and the other several committees. In this state of the case, it will necessarily be found that our reports are overlapping each other. Provisions will be reported by different committees on the same subject, nor do I suppose that there will be found any inconvenience in this. The Convention will have where this occurs different projects upon the same matter submitted for their consideration. Whatever is adopted will be finally referred to the Committee on Revision, whose main duty it will be to render everything consistent and put everything in its proper place in the Constitution. It will then come up at last for final revision by the Convention itself.

With these remarks I submit the report.

Mr. Lamb then sent the report to the desk of the Secretary as follows:

The committee respectfully recommend that the following provisions be inserted in the Constitution of West Virginia:

1. The legislative power of the State shall be vested in a Senate and House of Delegates. The style of their acts shall be, *"Be it enacted by the Legislature of West Virginia."*

2. The senate shall be composed of eighteen, and the house of delegates of forty-six members. The term of office for senators shall be three years, and that of delegates one year, commencing, in each case, on the first day of October next succeeding their election. The regular elections for members of the legislature shall be held on the fourth Thursday of May. But vacancies in either branch shall be filled by election, for the unexpired term, in such a manner as shall be prescribed by law.

3. For the election of senators, the state shall be divided into nine senatorial districts, as nearly equal as possible in white population; each district to choose two senators. Every such district shall be compact, formed of contiguous territory and be bounded by county lines. After each census hereafter taken by authority of the United States, the legislature shall alter the senatorial districts, so far as may be necessary to make them conformable to the foregoing provisions.

4. Until the senatorial districts shall be differently arranged after the next census taken by authority of the United States the counties of Hancock, Brooke and Ohio shall constitute the First senatorial district; Marshall, Wetzel and Marion, the second; Monongalia, Preston and Taylor, the third; Pleasants, Tyler, Ritchie, Doddridge and Harrison, the fourth; Wood, Jackson, Wirt, Roane, Calhoun and Gilmer, the fifth; Barbour, Tucker, Lewis, Braxton, Upshur and Randolph, the sixth; Mason, Putnam, Kanawha, Clay and Nicholas, the seventh; Cabell, Wayne, Boone, Logan, Wyoming, Mercer and McDowell, the eighth; and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe, the ninth.

5. For the election of delegates, every county containing a white population of less than one-half the ratio of representation for the house of delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a delegate district.

6. After each census hereafter taken by authority of the United States, the delegates shall be apportioned as follows:

The ratio of representation for the house of delegates shall be ascertained by dividing the whole white population of the State by the number of which the house is to consist, and rejecting the fraction of a unit, if any, resulting from such division.

Dividing the white population of every delegate district, and of every county not included in a delegate district, by the ratio thus ascertained, there shall then be assigned to each, a number of delegates equal to the quotient obtained by this division of its white population, excluding the fractional remainder.

The additional delegates which may be necessary to make up the whole number of which the house is to consist, shall then be assigned to those delegate districts, and counties not included in a delegate district, which would otherwise have the largest fractions unrepresented. But every delegate district and county not included in a delegate district, shall be entitled to at least one delegate.

7. Until a new apportionment be declared under the next census to be taken by authority of the United States, the counties of Calhoun and Gilmer shall form the first delegate district; Clay and Braxton the second; Pleasants and Wood the third; McDowell, Wyoming and Raleigh the fourth; Tucker and Randolph the fifth; and Webster and Nicholas the sixth. And the apportionment of delegates shall be as follows:

To the third delegate district, two delegates; and to the other five, one each.

To Barbour, Boone, Brooke, Cabell, Doddridge, Fayette, Greenbrier, Hancock, Jackson, Lewis, Logan, Mason, Mercer, Monroe, Pocahontas, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel and Wirt counties, one delegate each.

To Harrison, Kanawha, Marion, Marshall, Monongalia and Preston counties, two delegates each. And to Ohio county, three delegates.

8. The arrangement of the senatorial and delegate districts, and apportionment of delegates, shall hereafter be declared by law as soon as possible after each succeeding census. When so declared, they shall apply to the first regular election for members of the legislature to be thereafter held; and shall continue in force, unchanged, until the districts be changed and delegates reapportioned under the next census.

9. No new county shall be formed having an area of less than four hundred and fifty square miles. Nor shall a new county be formed if another county be thereby reduced below that area; or if any territory be thereby taken from a county containing less than four hundred and fifty square miles.

And no new county shall be formed containing a white population of less than four thousand. Nor shall a new county be formed if the white population of another county be thereby reduced below that number; or if any county containing less than four thousand white inhabitants be thereby reduced in area. But the legislature may, at any time, include any county containing less than four thousand white inhabitants within an adjoining county or counties as part thereof.

10. Additional territory may be admitted into and become part of this State, with the consent of the legislature thereof. And in such case, the legislature shall provide by law for the representation of the white inhabitants thereof in the senate and house of delegates, in conformity with the principles set forth in this Constitution. And the number of members of which each branch of the legislature is to consist, shall thereafter be increased by the representation assigned to such additional territory.

11. The legislature shall have power to provide for a registry of votes, and to prescribe the manner of conducting and making returns of elections, and of determining contested elections. They shall have power to pass all laws necessary or proper to prevent intimidation, disorder or violence at elections, or corruption or fraud in voting.

12. No person shall be a senator who shall not have attained to the age of twenty-five years; or who was not, at the time of his election, entitled to vote in the senatorial district for which he was chosen. And no person shall be a delegate who was not, at the time of his election, entitled to vote in the delegate district or county for which he was chosen.

Nor shall any person holding an office of profit under this State or the United States; any minister or priest, of a religious denomination; any salaried officer of a banking corporation or company; or any attorney for the State, be a member of either branch of the legislature.

No person who may have collected, or been entrusted with public money, whether State, county, township or municipal, shall be eligible to the legislature, or to any office of honor, trust or profit, under this State, until he shall have duly accounted for and paid over such money.

If a senator or delegate remove from the district or county, for which he was chosen, his office shall be thereby vacated.

13. Any citizen of this State, who shall, after the adoption of this Constitution, either in or out of the State, fight a duel with deadly weapons, or send or accept a challenge so to do; or who shall act as second, or knowingly aid or assist in such duel, shall ever thereafter be incapable of holding any office of honor, trust or profit under this State.

14. The legislature shall meet once in every year, and not oftener, unless convened by the governor. Unless another time be prescribed by law, the regular session shall begin on the first Monday of December.

15. The governor may convene the legislature by proclamation, whenever in his opinion, the public safety or welfare shall require it. It shall be his duty to convene them, on application of a majority of the members elected to each branch.

16. The seat of government shall be at the city of Wheeling, until the legislature shall establish a permanent seat of government by law.

17. When by reason of war, insurrection, contagious or epidemic diseases, or for other causes, the legislature, in the opinion of the governor, cannot safely meet at the seat of government, the governor, by proclamation, may convene them at another place.

18. No session of the legislature, after the first, shall continue longer than forty-five days, without the concurrence of three-fifths of the members elected to each branch.

19. Neither branch, during the session, shall adjourn for more than two days, without the consent of the other. Nor shall either, without the consent of the other, adjourn to any other place than that in which the legislature is then sitting.

20. Each branch shall be the judge of the elections, qualifications and returns of its own members.

21. A majority of each branch shall constitute a quorum to do business. But a smaller number may adjourn from day to day, and compell the attendance of absent members in such manner as shall be prescribed by law.

22. The senate shall choose from their own body a president, and the house of delegates one of their own number as speaker. Each branch shall appoint its own officers and remove them at pleasure; and shall determine its own rules of proceeding.

23. Each branch may punish its own members for disorderly behavior; and, with the concurrence of two-thirds of the members present, expel a member; but not a second time for the same offence.

24. Each branch shall have the power necessary to provide for its own safety, and the undisturbed transaction of its own business; and may punish, by imprisonment, any person, not a member, for disrespectful behavior in its presence; for obstructing any of its proceedings, or any of its officers in the discharge of his duties; or for any assault, threatening or abuse of a member for words spoken in debate. But such imprisonment shall cease at the termination of the session; and shall not prevent the punishment of any offence by the ordinary course of law.

25. For words spoken in debate, or any report, motion or proposition made, in either branch, a member shall not be questioned in any other place.

26. Members of the legislature shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during the session, and for ten days before and after the same.

27. Senators and delegates shall receive for their services a compensation to be precribed by law. No act changing the compensation shall affect members of the legislature then in office.

28. Bills and resolutions may originate in either branch, to be approved, amended or rejected by the other.

29. No bill shall become a law until it has been fully and distinctly read, on three different days, in each branch, unless in cases of urgency, three-fourths of the members present dispense with this rule.

30. No law shall embrace more than one object, which shall be expressed in its title.

31. On the passage of every bill, the vote shall be taken by yeas and nays, and be entered on the Journal; and no bill shall be passed by either branch without the affirmative vote of a majority of the members elected thereto.

32. The presiding officers of each branch shall sign publicly, in the presence of the branch over which he presides, while the same is in session, all bills and joint resolutions passed by the legislature.

33. Each branch shall keep a journal of its proceedings, and cause the same to be published from time to time; and the yeas and nays on any question, shall at the desire of one-fifth of those present, be entered on the journal.

34. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

35. The legislature, in cases not provided for in this Constitution, shall prescribe by law the terms of office, powers, duties, and compensation of all officers of the State, and the manner in which they shall be appointed and removed.

36. No extra compensation shall be granted or allowed by the legislature to any public officer, agent or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the salary or compensation of any public officer be increased or diminished during his term of office, unless the office be abolished.

37. Any officer of the State may be impeached for maladministration, corruption, neglect of duty or any high crime or misdemeanor.

The house of delegates shall have sole power of impeachment. The senate shall have the sole power to try impeachments. When sitting for that purpose, the senators shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in case of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

The Senate may sit during the recess of the legislature for the trial of impeachments.

38. No act to incorporate any joint stock company, or to confer additional privileges on the same; and no private act of any kind, shall be passed, unless public notice of the intended application for such act be given under such regulations as shall be prescribed by law.

39. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion; and the same shall in no wise affect, diminish or enlarge their civil capacities. And the legislature shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages on any sect or denomination; or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

40. The legislature shall not grant a charter of incorporation to any church or religious denomination; but may provide by general laws for securing the title of church property so that it shall be held and used for the purposes intended.

41. The legislature shall confer on the courts the power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities; but shall not, by special legislation, grant relief in such cases.

42. The legislature shall pass laws to protect the property of the wife against the acts and debts of the husband.

43. No convention shall be called, having authority to alter the constitution of the state, unless it be in pursuance of a law passed by the affirmative vote of a majority of the members elected to each branch of the legislature, declaring distinctly the powers and object of such convention, and providing that polls shall be

held through out the state, on some day therein specified, which shall be not less than three months after the passage of such law, for the purpose of taking the sense of the voters on the question of calling a convention for the purpose and with the powers set forth in such law. And such convention shall not be held unless a majority of the votes cast at such polls be in favor of calling the same; nor shall members be elected to such convention, until at least one month after the result of the polls shall be duly ascertained, declared and published. And all acts and ordinances of said convention shall be submitted to the voters of the state for ratification or rejection, and shall have no validity whatever until they are ratified; and in no event shall they, by any shift or device, be made to have any retrospective operation or effect.

DANIEL LAMB, Chairman.

SENATORIAL DISTRICTS PROPOSED

1		2		3	
Hancock	4,442	Marshall	12,936	Monongalia	12,907
Brooke	5,425	Wetzel	6,691	Preston	13,183
Ohio	22,196	Marion	12,656	Taylor	7,300
Whites	32,063		32,283		33,390
4		5		6	
Pleasants	2,926	Wood	10,791	Barbour	8,729
Tyler	6,488	Jackson	8,240	Tucker	1,396
Ritchie	6,809	Wirt	3,728	Lewis	7,736
Doddridge	5,168	Roane	5,309	Braxton	4,885
Harrison	13,185	Calhoun	2,492	Upshur	7,064
		Gilmer	3,685	Randolph	4,793
Whites	34,576		34,245		34,603
7		8		9	
Mason	8,752	Cabell	7,691	Webster	1,552
Putnam	5,708	Wayne	6,604	Pocahontas	3,686
Kanawha	13,787	Boone	4,681	Fayette	5,716
Clay	1,761	Logan	4,789	Raleigh	3,291
Nicholas	4,470	Wyoming	2,797	Greenbrier	10,499
		Mercer	6,428	Monroe	9,526
		McDowell	1,535		
Whites	34,478		34,525		34,270

Whole white population of above 44 counties, 304,433, being an average of 33,825 to each district.

Proposed House of Delegates, 46 members—Ratio 1 to 6618 whites.

		White Population by Census of 1860	Quotients	Fractions	Delegates As'd.
1. Calhoun	2,492				
Gilmer	3,685	6,177	0	6,177	1*
2. Clay	1,761				
Braxton	4,885	6,646	1	28	1
3. Pleasants	2,926				
Wood	10,791	13,717	2	481	2
4. McDowell	1,535				
Raleigh	3,291				
Wyoming	2,797	7,623	1	1,005	1
5. Tucker	1,396				
Randolph	4,793	6,189	0	6,189	1*
6. Webster	1,552				
Nicholas	4,470	6,022	0	6,022	1*
Barbour		8,729	1	2,111	1
Boone		4,681	0	4,681	1*
Brooke		5,425	0	5,425	1*
Cabell		7,691	1	1,073	1
Doddridge		5,168	0	5,168	1*
Fayette		5,716	0	5,716	1*
Greenbrier		10,499	1	3,881	1
Hancock		4,442	0	4,442	1*
Harrison		13,185	1	6,567	2‡
Jackson		8,240	1	1,622	1
Kanawha		13,787	2	551	2
Lewis		7,736	1	1,118	1
Logan		4,789	0	4,789	1*
Marion		12,656	1	6,038	2‡
Marshall		12,936	1	6,318	2‡
Mason		8,752	1	2,134	1
Mercer		6,428	0	6,428	1*
Monongalia		12,907	1	6,289	2‡
Monroe		9,526	1	2,908	1
Ohio		22,196	3	2,342	3
Pocahontas		3,686	0	3,686	1*
Preston		13,183	1	6,565	2‡
Putnam		5,708	0	5,708	1*
Ritchie		6,809	1	191	1
Roane		5,309	0	5,309	1*
Taylor		7,300	1	682	1
Tyler		6,488	0	6,488	1*
Upshur		7,064	1	446	1

	White Population by Census of 1860	Quotients	Fractions	Delegates As'd.
Wayne	6,604	0	6,604	1*
Wetzel	6,691	1	73	1
Wirt	3,728	0	3,728	1*
	304,433	25	139,083	46

*These districts and counties have one delegate assigned to each of them on the rule that each delegate district, etc., shall have at least one delegate.

‡These counties, which would otherwise have the largest fractions unrepresented, have an additional delegate each assigned to them, in order to make up the full number of forty-six.

In the other counties, the fractions are unrepresented.

MR. PAXTON. I thought by an order sometime ago all reports were to be laid on the table without reading.

MR. LAMB. Not reports; propositions.

THE PRESIDENT. That applied to propositions, petitions, etc. Any such papers as were to be referred to standing committees.

MR. LAMB. I believe I will move to dispense with the reading. The paper will be printed and handed to the members in the morning. I will move that it lie on the table and be printed.

The motion was agreed to.

MR. LAMB. I should mention to the members of the committee that I have appended to the report the figures showing the apportionment and arrangement of the senatorial districts.

MR. BROWN of Kanawha. On that subject of apportionment, the committee was not able entirely to agree. I may be wrong, but I have deemed it my duty to bring in a minority report so far as that is concerned. The balance of the report I fully concur with. My object is that the whole subject may be before the Convention. I will make it my duty as soon as I can to furnish a minority report to this report now under consideration so far as apportionment is concerned. That is the difficulty in arranging the districts. It is a matter of a great deal of trouble and calculation. The committee have not been fully able to agree in the arrangement that has been adopted.

THE PRESIDENT. The minority report is now ready?

MR. BROWN of Kanawha. No, sir.

Mr. Hervey offered the following resolution, which he asked to have printed and referred to the Committee on the Judiciary:

Section 1. There shall be established in each county, a court for such county, which shall be a court of record, and holden every two months by one judge, elected by the voters of the county; who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, or by fees, or both, as shall be provided by law.

Section 2. The jurisdiction of said court shall be the same as that of the existing county courts, except so far as it is modified by this Constitution, or may be changed by law.

Section 3. There shall be elected in each county, by the electors thereof, one clerk of the circuit court, who shall hold his office for the term of four years and until his successor shall be elected and qualified. He shall, by virtue of his office, be clerk of all other courts held therein; but the legislature may provide, by law, when necessary, for the election of a clerk, with a like term of office, for each, or any other of the courts of record, under such regulations as may be directed by law. Clerks of courts shall be removable for such cause, and in such manner as shall be prescribed by law.

MR. STUART of Doddridge. I wish to make an inquiry. We passed a resolution yesterday paying the officers of this body the same compensation as paid at the last convention. I am not informed of the fact whether they had an assistant clerk or not. I understand the duties of the Clerk here cannot be performed by one man; and my inquiry is simply to know whether they had one at the last convention and whether he was compensated, if anybody is informed on that point.

THE PRESIDENT. The Chair has not the information before him.

MR. STEVENSON of Wood. I will state, Mr. President, that I was informed by some person this morning, if I recollect right the sergeant-at-arms, that they had an assistant clerk. If I am mistaken in that, however, I can be corrected.

MR. STUART of Doddridge. Was his compensation fixed?

THE SERGEANT-AT-ARMS. No, sir; the Clerk received so much and he agreed to pay his own assistant.

MR. STUART of Doddridge. Can anybody inform us what the price was?

THE SECRETARY. It was eight dollars, sir. This Clerk doesn't feel like he could employ one at that price.

MR. STUART of Doddridge. I am informed, Mr. President, that duties devolving on our present Clerk cannot be performed by one man, and it is very heavy and laborious; and I am also informed by the present Assistant Clerk that he cannot remain here unless compensated. If his services are expected to be needed here, he will return when reassembles and assist us in our labors. It strikes me that for the duties devolving on our present Clerk there is not sufficient compensation to authorize him to employ a competent assistant clerk. I would like to bring that thing before the Convention and know what are their views on that question. I understand we will not be able to get the labors of our Assistant Clerk unless there is some conpensation fixed for him.

MR. POMEROY. Well, I hope the gentleman from Doddridge will suggest the amount he ought to get.

MR. STUART of Doddridge. I merely throw out this.

MR. POMEROY. Well, I am in favor of it, and if the gentleman doesn't feel like making a suggestion, that as it is in the family and they are brothers, that he have three dollars a day.

THE SECRETARY. I would just suggest that I do not ask for much. If you will make it two dollars, I will be satisfied.

THE PRESIDENT. It is moved by the gentleman from Hancock to increase the compensation of the Secretary two dollars a day.

The motion was agreed to.

MR. STEVENSON of Wood. Mr. President, while matters of that kind are up, I wish to state that a person who performs the duties of janitor here gets but a dollar and a half a day according to the resolution passed last night, while the door keepers get two dollars a day. The janitor does more work than any man about the building before the Convention meets and after it adjourns and has to attend to the committee rooms until very late hours at night; and I move that his salary be fixed at two dollars a day. It is certainly worth that if the door keepers are worth that.

The motion was agreed to.

MR. STEVENSON of Wood. Mr. President, the committee appointed to make an estimate of the probable cost of the Convention for a session of sixty-five days have not had much time to attend to the matter not having received all the bills of expenses up to the present time. I have not had time to consult with my colleague from Tyler but I will take the liberty of offering the present report in his absence. I have merely sketched it out, sir, and the phraseology may not be as it should be. I offer it now because there appears to be no other business before the Convention.

The Committee on Printing and Expenditures, having been instructed to "report an estimate of the sum which will probably be required to pay the members and officers, and defray all other expenses of the Convention, based on a probable session of sixty-five days, in order that the same may be laid before the legislature for their government," would respectfully report that they have made such estimate, and find that the probable expenses of the Convention for a session of sixty-five days, will be sixteen thousand, three hundred dollars.

All of which is respectfully submitted.

W. E. STEVENSON, Chairman.

MR. LAMB. I suggest that it had better be made $500 from the fact that we added something to the salaries of officers.

Mr. Stevenson accepted the suggestion and altered the report to read $16,500.

MR. VAN WINKLE. I wish to offer the following:

RESOLVED, That the report of the committee be accepted, and that the President of this Convention inform the legislature that the expenses of this body will probably amount to sixteen thousand, five hundred dollars, and to request that the said sum be placed at the disposal of the Convention.

The resolution was adopted.

MR. LAMB. The next business in order will be the report of the Committee on the Executive Department. I saw the gentleman from Marshall come into the Convention. I do not see him now. O, yes, there he is.

MR. CALDWELL. Mr. President, I was going to ask, sir, whether the action of this body on the report on fundamental provisions would not make it necessary that the report of the Committee on the Executive Department should be recommitted to that committee, sir. The course adopted by this Convention in the report on its fundamental business makes it absolutely necessary that material changes should be made in the report of the Committee on the Executive Department. I find also, sir, in the examination of that report as printed that there are errors that make some sections read badly; and in order that the report may conform to the action of this Convention, as I have already mentioned, sir, and these errors corrected, I believe before this body could take action it should be recommitted and printed. I make that motion, sir—that it be recommitted but not printed.

The motion was agreed to.

MR. LAMB. Mr. President, that report being disposed of, there is nothing that I am aware of that is before the Convention. I would move that when this Convention adjourn, it be to meet tomorrow at eleven o'clock, intending to follow it up with a motion to adjourn unless there are some reports or something else to be brought before the Convention that I am not aware of.

MR. HALL of Marion. Might we not be ready to meet at ten tomorrow if we have not much to do in committee? I make the suggestion.

MR. LAMB. I doubt whether we can get the printing done by that time.

MR. VAN WINKLE. I would like to take this opportunity to state that there will be a report in the morning on county organization; also to request the Committee on Fundamental and General Provisions to meet this afternoon at half past two at the room over the way.

The President stated the question to be the motion by Mr. Lamb in reference to adjournment.

MR. LAMB. The standing rule was originally eleven. The standing rule was altered to make it ten. The motion in regard to meeting this morning only applied to today.

The motion was agreed to.

MR. HALL of Marion. Before the motion to adjourn, I would give notice that the committee will meet at the committee rooms this afternoon at half past two o'clock.

MR. PAXTON. Before a motion to adjourn, I desire to give notice to the Committee on Taxation and Finance to meet at three o'clock in their room.

MR. HALL of Marion. The committee named by me will meet in the room occupied by the Committee on the Judiciary.

MR. CALDWELL. I rise to give notice that the Committee on the Executive Department will meet tonight at seven o'clock. I am inclined to think that seven o'clock will suit that committee better than any other hour, as the other committees meet this afternoon.

MR. STEVENSON of Wood. I would state, Mr. President, that so far as I am concerned three o'clock this afternoon would suit me very well. Either three or seven in the evening. I do not care which as I am on that committee.

MR. CALDWELL. The member from Monongalia will have another committee at three.

MR. STEVENSON of Wood. Very well; make it seven.

MR. DERING. Mr. President, I move we adjourn.

The motion was agreed to and the Convention adjourned.

XIX. WEDNESDAY, DECEMBER 18, 1861.

The Convention reassembled at the appointed hour and was opened with prayer by the Rev. T. H. Trainer, a member from Marshall.

The minutes were read and approved.

MR. BROWN of Kanawha. Mr. President, I will now offer the minority report to which I referred yesterday morning of the legislative committee; and I will ask that it be laid on the table and printed.

Mr. Brown accordingly sent to the Secretary's desk the following:

The undersigned, one of the Committee on the Legislative Department, not being satisfied with that part of the majority report of said committee, begs leave to submit the following:

FOR THE ELECTION OF SENATORS

1. The counties of Hancock, Brooke and the county of Ohio, excluding the city of Wheeling, shall constitute one district.
2. The counties of McDowell, Wyoming, Boone and Mercer, shall constitute another district.
3. The city of Wheeling shall constitute another district.
4. The counties of Wayne, Cabell and Logan shall constitute another district.
5. The counties of Preston and Tucker shall constitute another district.
6. The counties of Putnam and Mason shall constitute another district.
7. The counties of Monongalia and Taylor shall constitute another district.
8. The counties of Greenbrier and Monroe shall constitute another district.
9. The counties of Marion and Wetzel shall constitute another district.
10. The county of Kanawha shall constitute another district.
11. The counties of Marshall and Tyler shall constitute another district.
12. The counties of Jackson, Roane and Calhoun shall constitute another district.
13. The counties of Doddridge, Ritchie and Gilmer shall constitute another district.
14. The counties of Wood, Wirt and Pleasants shall constitute another district.
15. The counties of Barbour, Randolph and Pocahontas shall constitute another district.
16. The counties of Fayette, Nicholas, Clay and Webster shall constitute another district.
17. The county of Harrison shall constitute another district.
18. The counties of Lewis, Upshur and Braxton shall constitute one district.

And if the following named counties shall become a part of this State, then—

19. The counties of Pendleton and Hardy shall constitute another district.
20. The counties of Hampshire and Morgan shall constitute another district.
21. The counties of Berkeley and Jefferson shall constitute another district.
22. The county of Frederick shall constitute another district.

One senator to be elected by the voters in each district; or, if double districts should be preferred, then as follows, viz:

1. The counties of Hancock, Brooke and Ohio shall constitute one district.

2. The counties of Wayne, Cabell, Logan, Boone, Wyoming, Raleigh and McDowell shall constitute another district.

3. The counties of Monongalia, Preston, Taylor and Tucker shall constitute another district.

4. The counties of Mason, Putnam, Kanawha and Fayette shall constitute another district.

5. The counties of Marion, Marshall, Wetzel and Tyler shall constitute another district.

6. The counties of Jackson, Wood, Pleasants, Wirt, Calhoun and Roane shall constitute another district.

7. The counties of Harrison, Barbour, Doddridge and Ritchie shall constitute another district.

8. The counties of Greenbrier, Monroe, Mercer, Nicholas and Clay shall constitute another district.

9. The counties of Lewis, Upshur, Randolph, Pocahontas, Webster, Braxton and Gilmer shall constitute another district.

10. The counties of Pendleton, Hardy, Hampshire and Morgan shall constitute another district.

11. The counties of Berkeley, Frederick and Jefferson shall constitute another district.

Two senators to be elected by the voters in each district.

In making the apportionment just stated, the undersigned has kept steadily in view the following considerations, viz.:

1st. Equality of population and territory.
2nd. The geographical features of the territory.
3rd. Compactness in the form of districts.
4th. The homogeniety, social intercourse and business relations of the people of each district and their peculiar and local interests.

Departing from these principles only where it was believed necessity required it, the undersigned has begun at the most remote parts of the State and laid off the districts alternately at the opposite extremes, and so on till they united in the middle, or as near it as could be attained.

JAMES H. BROWN.

* * * * *

SENATORIAL No. 16,912

1.	Hancock	4,442	
	Brooke	5,425	
	Ohio	4,196	14,063
2.	McDowell	1,535	
	Wyoming	2,791	
	Boone	4,681	
	Mercer	6,428	15,435

3.	Wheeling City		18,000
4.	Wayne	6,604	
	Cabell	7,691	
	Logan	4,789	19,084
5.	Preston	13,183	
	Tucker	1,396	14,579
6.	Mason	12,770	
	Putnam	5,708	18,478
7.	Monongalia	12,907	
	Taylor	7,300	20,207
8.	Greenbrier	10,499	
	Monroe	9,526	20,025
9.	Marion	12,656	
	Wetzel	6,691	19,347
10.	Kanawha		13,717
11.	Marshall	12,936	
	Tyler	6,844	19,780
12.	Jackson	8,240	
	Roane	5,309	
	Calhoun	2,492	16,041
13.	Doddridge	5,168	
	Ritchie	6,809	
	Gilmer	3,688	15,665
14.	Wood	10,791	
	Wirt	3,728	
	Pleasants	2,926	17,445
15.	Barbour	8,729	
	Randolph	4,793	
	Pocahontas	3,689	17,211
16.	Fayette	5,716	
	Nicholas	4,470	
	Clay	1,552	
	Webster	1,761	13,499
17.	Harrison		13,185
18.	Lewis	7,736	
	Upshur	7,064	
	Braxton	4,885	19,685
19.	Pendleton	5,873	
	Hardy	8,521	14,394

20.	Hampshire	12,481	
	Morgan	3,613	16,064
21.	Berkeley	10,606	
	Jefferson	10,092	20,698
22.	Frederick		13,082

DOUBLE SENATORIAL No. 33,824

1.	Hancock	4,442	
	Brooke	5,425	
	Ohio	22,196	32,063
2.	Wayne	6,604	
	Cabell	7,691	
	Logan	4,784	
	Boone	4,681	
	Wyoming	2,791	
	Raleigh	3,291	
	McDowell	1,535	31,382
3.	Monongalia	12,907	
	Preston	13,183	
	Taylor	7,300	
	Tucker	1,396	34,786
4.	Mason	12,770	
	Putnam	5,708	
	Kanawha	13,717	
	Fayette	5,716	37,911
5.	Marion	12,656	
	Marshall	12,936	
	Wetzel	6,691	
	Tyler	6,848	39,131
6.	Jackson	8,240	
	Wood	10,791	
	Pleasants	2,926	
	Wirt	3,728	
	Calhoun	2,492	
	Roane	5,309	33,486
7.	Harrison	13,185	
	Barbour	8,729	
	Doddridge	5,168	
	Ritchie	6,809	33,891
8.	Greenbrier	10,499	
	Monroe	9,526	
	Mercer	6,428	
	Nicholas	4,470	
	Clay	1,761	32,684

9.	Lewis	7,736	
	Upshur	7,064	
	Randolph	4,793	
	Pocahontas	3,689	
	Webster	1,552	
	Braxton	4,885	
	Gilmer	3,685	33,404
10.	Pendleton	5,873	
	Hardy	8,521	
	Hampshire	12,481	
	Morgan	3,613	30,488
11.	Berkeley	10,606	
	Frederick	13,082	
	Jefferson	10,092	33,780

MR. HARRISON. I have a resolution in my hand to which I wish to call the attention of the Convention this morning, together with some few of the reasons which suggest themselves to my mind at this time for making the proposition. The Secretary can read it, and I will ask that it be laid on the table and printed and I will call it up at some future day of the Convention for action.

The Secretary read the resolution as follows:

RESOLVED, That the Constitution of Virginia be referred to a committee of five, with instructions to modify the same so as to adapt it to the territory embraced within the new State, and to provide for the formation of a new State Constitution at some future time.

MR. HARRISON. I would like to make a few remarks in reference to the reasons which have induced me to offer that resolution at this time. I believe it is my duty, sir, to offer such a proposition. I feel well assured it meets the views of my constituents, and I think that I may say that such a proposition will meet the views of a great many other citizens within the proposed boundary of the proposed new State. If we will look at this ordinance under which we are sitting here, we will find they provided, among other things that the Constitution which should be agreed upon by this Convention should be submitted to the people for their action on the 28th day of December. They further provided that we should meet here on the 26th of November. Now, did the Convention which framed this ordinance mean that that was a mere idle thing? That we should meet here and prepare and submit to the people a constitution within a month? I think not, sir. I think it was intended by the framers of that ordinance that we should take speedy action; and it has occurred to the minds of all my people that that speedy action is simply to take this present Constitution of Virginia and so modify it as to adapt it to our circumstances for temporary use. The public mind is not now in that condition to discuss the principles of constitutional government except along the river counties. The counties in the interior, partcularly as you go south and southwest, are in a state of the utmost confusion. In many of them there is no law at all prevailing, and in a large number of others one half the people are without any law at all. The action of the various committees has progressed far enough to show us that many important and radical changes are to take place in this Constitution—changes that perhaps the people ought to have time and opportunity to reflect upon and discuss. I hold that the present confused state of affairs will continue beyond the time when we shall have taken this vote in a large majority of the counties embraced in the boundaries of this new State to such an extent that discussion of the present Constitution will be out of the question. There is another thing, sir. When we look at the report of the Secretary of the Commonwealth, we find there that comparatively a small proportion of the people inhabiting this boundary are really represented in this Convention. There are ten counties that have no representation on this floor at all. There are five or six more in which a very small—an extremely small proportion of the inhabitants of the county are represented. It seems to me these are considerations also which should induce us to submit to the people the old constitution simply modified and adapted to the circumstances under which we meet. For instance, diminish the numbers of the members of the legislature, diminish the number of the judges, etc. Now, sir, we can do that in 48 hours. A committee can in 48 hours take this old constitution and prepare it to suit the altered circumstances of our territory if it does that alone. I do not understand that the people of this territory have such very great objection to the principles of the old Constitution of Virginia under which we have been living for nearly a century, but to the policy of the eastern portion of the State, the outrageous action of our eastern brothers and particularly in reference to the question of secession. This is one of the great motives that has prompted our people to seek a severance from the other portion of the State. Moreover, sir, the delegates here assembled are about to return to their respective counties, a large number of them. Of course, we may suppose that, at least privately, the action and proceedings and intention of this Convention will be discussed—not, perhaps discussed publicly but in private conversation. This matter may then be brought before their people. They may discuss it with their people there, and when we shall have returned I propose to call up this resolution and do not propose then to add any additional remarks upon it but simply to take the vote on it after having in a manner consulted with our people.

It seems to me, sir, that provision which I have inserted that at some future time a convention shall be assembled and make a new constitution—that this will also meet the views of our people, because in the existing constitution there is a provision that in 1865 some modification should take place in the arrangement of the constitution under which we are now living. Perhaps that would be a suitable time, because our people are looking to that time. It may be advisable to defer the formation of a new constitution for our people until some such a time as that. I hope in that time the war will be over and the country calmed down and the people will be ready to discuss and think about all these radical changes which perhaps as a new kind of people we may find necessary for our existence.

There is one other consideration, sir. It is in answer to the argument of the gentleman from Wood—an argument that had had heretofore great weight with me. It is this: the argument is that we ought so to frame our Constitution as to invite the emigration of other states. Well, that is true to a certain extent; but it seems to me we must reflect that we are not framing a constitution for the people of other states but for the people who inhabit this territory. But I think, sir, we ought to yield something to the prejudices of our people. It may be that a great many of their views are simply prejudices, but we ought to defer to them and we ought to wait to prepare the public mind for important changes. I cannot say they are not beneficient changes, but by deferring the action of the Convention for the making of a constitution we will have time to canvass this thing before the people and prepare their minds for it.

The fact, it seems to me, sir, that we will have an opportunity of conversing, a great many of us, with our people on this subject would at least merit some consideration. It is true, nothing will be obligatory on any delegate who returns home to mention the subject at all. I have offered the resolution now simply from the fact that we are going home and in the course of conversation it may be our people will have this matter before them and make suggestions to their delegates either favorable or opposed to it.

MR. VAN WINKLE. I believe it is rather unusual for a gentleman to argue the merits of a question on a motion to lie on the table and print. This is a larger exhibition—

MR. HARRISON. I had no idea of taking up debate.

MR. VAN WINKLE. I was going to say this was a rather larger exhibition of a hankering after the flesh-pots than I expected to see. I did think there would be a little of it manifesting itself indirectly; but this open and avowed cry of "would God we were in Egypt, where we sat by the flesh-pots and ate to the full," is more than I looked for. I may suppose the charms of that old constitution, which has now been modified and amended under the auspices of Mr. Stuart in the Richmond convention, by which every poor man is to be deprived of a vote, and by which it is to be asserted that there are classes in society—that one is everybody and the other is nobody; one is everything and the other is nothing—I suppose, sir, that in that gentleman's strong affection for this old constitution he would like to take in those recent amendments. Now, sir, this question may as well be decided now. If it is going to be decided as the gentleman proposes, the committees must pause here; for it is not to be supposed that if we believe this proposition would be adopted that the committees would offer another report. If there is the slightest danger that this resolution will pass, of course every committee would cease its labors at once. I therefore move to postpone indefinitely.

MR. BROWN of Preston. I call the yeas and nays on the amendment.

The resolution was again reported by the Secretary.

MR. BROWN of Kanawha. I desire to inquire if that proposition does not, under the standing rule, go to the proper committee to be printed? It seems to me the multitude of resolutions we have had have not been even read.

THE PRESIDENT. This resolution does not come within that rule. It is the appointment of a committee and a duty to be performed under it by the Chair, and it would not come under the rule referred to.

MR. VAN WINKLE. I have nothing more to say except on the question of order. This does not propose to be referred to a standing committee. I believe the motion is entirely in order at any stage.

MR. STEVENSON of Wood. I was going to make a remark, sir, if it would be in order. That if the gentleman would modify it so as to refer it to a standing committee, I would have no objection to that. I think as a matter of courtesy he is entitled to a vote.

MR. BROWN of Kanawha. I rise with a view of explaining the vote I shall give on that question. I did not catch as the resolution was read the fact that it required a separate committee. If it were modified so as to be referred to a standing committee, I should have no objection to voting for it. I shall vote against it if it goes to a separate committee.

MR. HARRISON. I have no objection to modify it to suit the views of any member.

MR. VAN WINKLE. I insist on my motion. I submit to no modification.

THE PRESIDENT. Modification would not now be in order, the yeas and nays having been called for.

The question was taken on the motion to indefinitely postpone and the motion was agreed to by the following vote:

YEAS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brooks, Brumfield, Battelle, Chapman, Caldwell, Carskadon, Cassady, Dering, Dille, Dolly, Hansley, Hall of Marion, Haymond, Hubbs, Hervey, Hagar, Irvine, Lamb, Montague, Mahon, O'Brien, Parsons, Parker, Paxton, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Stuart of Doddridge, Taylor, Trainer, Van Winkle, Walker, Warder, Wilson—41.

NAYS—Messrs. Harrison, Powell—2.

MR. BATTELLE. Mr. President, with the indulgence of the Convention, I wish to correct a word in the beginning of my proposition offered on Saturday last, with a view simply that it may be in a correct form in the hands of the members. I suppose the inaccuracy has been noticed by many of them. I wish that they would be kind enough to change the word "relatives" to "relations."

MR. CALDWELL. Mr. President, the Committee on the Executive Department, sir, having had under consideration the former report of that committee which was recommitted to them on yesterday, have requested me, sir, to submit the embodiment of other provisions in lieu of those contained in that report. I suppose it had better be laid on the table and printed.

I will just observe that at the instance of some members of the committee, the committee all concurred that if there was no other business, that this report might be taken up without printing. The former report has been printed, and by reading the amended report, the first one being in the hands of the members of the Convention—we supposed they might with facility note the changes in this amended report. However, it would be more satisfactory to have the amended report printed. If it is the pleasure of the Convention to dispense with the printing of that report so as to enable the Convention to take it up and act on it today, I would suggest that it do not lie on the table and be printed. I merely advert to the fact that the thing was talked of in the committee. It is for the Convention, however, to determine.

The Secretary read the report as follows:

Your committee, having had under consideration its first report, recommitted to them, beg leave to submit the following provisions in lieu of those embodied in the said first report, viz.:

1. The chief executive power of this Commonwealth shall be vested in a governor. He shall hold his office for the term of four years, to commence on the first day of January next succeeding his election; but the same person shall not be elected for two successive full terms, nor shall any person who has served as governor for two full terms be again elected to the office. The person acting as governor shall not be elected or appointed to any other office during his term of service.

2. No person shall be elected Governor unless he has attained the age of thirty years, and has resided in a county forming a part of this State for five years next preceding his election.

3. The governor shall reside at the seat of government; shall receive two thousand five hundred dollars for each year of his service, and during his continuance in office, shall receive no other emolument from this or any other government.

4. The governor shall be commander-in-chief of the military forces of the State; shall have power to call out the militia to repel invasion, suppress insurrection, and enforce the execution of

the laws; shall conduct in person, or in such manner as may be prescribed by law, all intercourse with other foreign states; and during the recess of the legislature, shall fill temporarily all vacancies in office not otherwise provided for, by commissions to expire at the end of thirty days after the commencement of the succeeding session of the legislature. He shall take care that the laws be faithfully executed; communicate to the legislature at each session thereof the condition of the Commonwealth; recommend to the consideration of the members such measures as he may deem expedient; and convene the legislature in extra session when in his opinion the interest of the Commonwealth may require it. He shall have power to remit fines and penalties in such cases and under such regulations as may be prescribed by law; to commute capital punishment, and, except when the prosecution has been carried on by the house of delegates, to grant reprieves and pardons, after conviction; but he shall communicate to the legislature at each session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with his reasons for remitting, commuting or granting the same.

5. The governor may require information in writing from the officers of the executive department, upon any subject pertaining to their respective offices, and also the opinion in writing of the attorney general upon any question of law relating to the business of the executive department.

6. Returns of the election of governor shall be made in the manner and by the persons designated by the legislature, to the secretary of the Commonwealth, who shall deliver them to the speaker of the house of delegates, on the first day of the next session of the legislature, who shall, within ten days thereafter, in the presence of a majority of each house of the legislature open the said returns, when the votes shall be counted. The person having the highest number of votes, if duly qualified, shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall thereupon be chosen governor by the joint vote of the two houses. Contested elections for governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

7. In case of the removal of the governor from office, or of his death, failure to qualify within the time prescribed by law, resignation, removal from the seat of government, or inability to discharge the duties of the office, the said office, with its compensation, duties and authority, shall devolve upon the president of the senate, and in case of his inability, or failure from any cause to act, on the speaker of the house of delegates; and the legislature shall provide by law for the discharge of the executive functions in other necessary cases.

8. A secretary of the Commonwealth, treasurer, and an auditor shall be elected at the same time and for the same term as the governor, their compensation and duties, and the mode of making returns of their election shall be prescribed by the legislature.

9. The legislature shall have power to establish a land office whenever it shall be deemed expedient, assign the duties thereof to a proper officer, and prescribe his compensation, term of, and manner of appointment to, office.

10. The legislature shall have power to vest the management and control of the works of internal improvement of the State, the disposition and investment of the fund arising therefrom, or that may be created for that purpose, in the governor, treasurer, and auditor, and to prescribe their duties as a board of public works.

11. The legislature shall have power to provide for the organization of the militia, and the appointment of militia officers; but no officer below the rank of brigadier general shall be appointed by the legislature.

12. Commissions and grants shall run in the name of the Commonwealth of West Virginia, and bear teste by the governor, with the seal of the Commonwealth annexed.

By order of the committee.

E. H. CALDWELL, Chairman.

MR. BROWN of Kanawha. Mr. President, in looking over this I see the report is substantially the same with a few modifications. I think it is perfectly competent for us to take up this report now without printing again, and I move we proceed to take up the report.

MR. VAN WINKLE. I am willing it should be taken up, with the understanding that if any gentleman desires any section to be passed by that the Convention will so do. A great many of these provisions are plain and simple but there may be cases where some gentleman will desire to offer an amendment and would want time to prepare it. In such cases he would have a right to ask that the section be passed by for the present.

MR. BROWN of Kanawha. I have no objections.

MR. STUART of Doddridge. I do not see in the present printed report how members of the Convention can offer an amendment to any certainty; because there are some sections entirely stricken out. The lines are numbered on the report, and we cannot point out where we want the amendment to come in. It seems to me it would be an inconvenience.

The motion to take up and consider was agreed to.

The Secretary reported the first section as follows:

1. The chief executive power of this Commonwealth shall be vested in a governor. He shall hold his office for the term of four years, to commence on the first day of January next succeeding his election; but the same person shall not be elected for two successive full terms, nor shall any person who has served as governor for two full terms be again elected to the office. The person acting as governor shall not be elected or appointed to any other office during his term of service.

MR. BROWN of Kanawha. Seeing some of the difficulties as the reading progresses in making amendments, I believe we will perhaps be delayed more in attempting to write out these amendments than to have it printed so that we can see the line on the paper before us. I will move to reconsider the vote.

The motion to reconsider was agreed to.

MR. BROWN of Kanawha. I suppose, Mr. President, the report lies on the table and will be printed?

THE PRESIDENT. The report under the rule would be printed as a matter of course without a motion.

MR. LAMB. Mr. President, there are eight sections of the report of the Committee on the Legislative Department ready for distribution. Will it be the pleasure of the Convention to take up that report at present? They will have authentic copies to act upon that far. If you do not take that course, I believe there is nothing else to do.

MR. POMEROY. I move that we take it up. I make that motion because we spent two days that we could accomplish very little. Now this report is before us. It has been read. We have all heard it read and there is a portion of it printed and I understand the other portion of it will be printed in a very short time—be here in the afternoon session; and therefore as the sections are entirely different, I think we can proceed with these first sections until the other is ready, under the rule that we have adopted to take up section by section. This report I judge is one that is not going to be passed in a few hours.

MR. BROWN of Kanawha. Mr. President, in taking up this I desire it distinctly understood whether the report of the minority which I submitted will be printed under the rule without a motion. I took it for granted it would. I desire that printed, to be considered with this report when we arrive at the report when the divergence takes place. There is only a small portion of the report in which there is any divergence.

The Secretary said the report was ordered to be printed.

Mr. Pomeroy's motion to take up the legislative report was agreed to.

The Secretary reported the first section recommended by the committee as follows:

1. The legislative power of the State shall be vested in a senate and house of delegates. The style of their acts shall be, "Be it enacted by the legislature of West Virginia."

MR. VAN WINKLE. I move to strike out the second clause, as is already provided for in the article adopted in the report of the Committee on Fundamental and General Provisions.

MR. LAMB. The clause reported by the Committee on Fundamental and General Provisions is this:

"2. Laws shall be enacted in the name of the State of West Virginia."

I suppose that that would render it necessary that your acts should commence, "Be it enacted by the State of West Virginia."

MR. VAN WINKLE. Precisely.

MR. LAMB. Then I would prefer to have the words "of the legislature."

MR. VAN WINKLE. That has been adopted, but stands so on its first reading. There is to be a second reading of that report, when the gentleman can make that correction. The amendment should have been made there if it was desired. I see there are several encroachments, sir, in this report, and I think, sir, I would meet them at the threshold—two committees that have been very much tampered with.

MR. LAMB. Another thing I may remark in continuation of the remarks I was about to make in reference to this subject is that there is nothing in these provisions which gives a name to the legislative body except this section—nothing which says it shall be called the "general assembly" or the "legislature," and this provision was intended to accomplish both purposes. It in fact gives the name of the body as well as prescribes the manner in which the act should commence.

MR. VAN WINKLE. Well, sir, I would withdraw my objection. We will strike it out of the other when it comes up.

MR. LAMB. As to the question of encroachment, I take it this is strictly a matter within the sphere of the legislative department and it is not—if the gentleman will excuse me in saying—it is not a fundamental provision in any sense of the term.

MR. VAN WINKLE. General provision.

MR. LAMB. Everything in the Constitution must be a "general provision."

MR. VAN WINKLE. I will withdraw my objection and we can strike it out of the other.

MR. LAMB. I wish, Mr. President, to say in explanation of the first clause that I would desire the Convention to understand what the committee intended to be the full purport of that clause. It is the foundation, sir, from which our legislative provisions commence. "The legislative power of the State shall be vested in the senate and house of delegates." Is it, therefore, properly within the meaning of those terms, "legislative power" as vested in the legislature, which is provided for by this report. Bearing this object steadily in view through the consideration of the report, we should recollect that it is not necessary to confer legislative power by express provisions upon the legislative body, for we start upon the principle that all legislative power of the State is vested in that body unless it is actually restricted. It is necessary, perhaps, to call the attention of members of the Convention to the full effect of this clause. It is the foundation stone upon which the Constitution of the legislature of the State rests—different from the constitution of congress, where power is to be sought for in the express provisions of the Constitution of the United States. Here, in the Constitution of the State, the power if it be a legislative power is granted unless there is some other provision in the Constitution which forbids it.

MR. HERVEY. Mr. President, I move the adoption of this first section.

The motion was agreed to and the Secretary reported the second section as follows:

2. The senate shall be composed of eighteen, and the house of delegates of forty-six members. The term of office for senators shall be three years, and that of delegates one year, commencing, in each case, on the first day of October next succeeding their election. The regular elections for members of the legislature shall be held on the fourth Thursday of May. But vacancies in either branch shall be filled by election, for the unexpired term, in such a manner as shall be prescribed by law.

MR. LAMB. If the gentleman from Kanawha wishes to bring up the subject presented in his special report, it will be necessary to begin here by laying aside the first clause of this section. It would only be necessary in reference to this section to pass by the first clause, the one that designates the number of members. The balance of the section might be acted upon.

MR. BROWN of Kanawha. I move to pass by, sir, the first clause.

The motion was agreed to.

MR. LAMB. I move the adoption of the rest of the section.

MR. SOPER. I move, sir, to strike out "three" in the eighth line, with a view of inserting "two."

If this motion prevails, sir, it will be followed by another to make single senatorial districts. That, then, will be followed, sir, by an amendment requiring the senators at their first meeting to draw lots, one-half of them will hold for one year; and the other half for two years; so that every year one-half the Senate will be elected, to be composed of two members. That is the object, sir, which I have in making the motion.

The motion was agreed to.

MR. BROWN of Kanawha. I will ask for a division on that vote.

MR. HERVEY. I believe the Chair decided the question.

MR. BROWN of Kanawha. If in order.

THE PRESIDENT. The Chair would be of the opinion that the call was too late.

MR. SHEETS. I move a reconsideration of the vote.

MR. BROWN of Kanawha. Would it be in order to submit a remark on that subject?

THE PRESIDENT. Oh, yes, certainly.

MR. BROWN of Kanawha. It occurs to me, Mr. President, that the Convention in voting on this subject of diminishing the number of years—we have just started into this report and clearly hardly considered the subject. I confess, sir, to my mind three years is the utmost limit we should have reduced it to. My inclinations are very strong that it should be enlarged instead of reduced, but I have determined not to attempt to alter the committee's report in that respect. But it seems to me that if we have any distinction between these two houses—or why have two houses? Why make any distinction at all? They are elected almost by the same constituency—unless we make some distinction in the length of time. It is a departure from the lengthy senatorial term heretofore in coming down to three years; and it seems to me there ought to be in a senate something more durable and permanent than in the house which now we have reduced to one year, and that mutation should not be written upon every line of our Constitution; that we ought to have an eye to something that is permanent and enduring, at least to some degree, in some department of the government. I should be very glad to see the house reconsider this motion and at least stand by the report of the committee if not enlarge it.

MR. SOPER. I hope the vote will not be reconsidered. The house of delegates will probably be composed of a large portion of new members and more or less of the old ones will be continued. The senate under the amendment just made will continue of old members for two years and the elections which will take place yearly to supply the vacancy may result in the re-election of the same individual. It necessarily follows that more or less of the members of the preceding legislature should be in the house. Why, sir, it is secured in the way I have named: One-half the senate certainly; and if we are to take the history of our country more or less members of the house of delegates are re-elected; so that the legislature will not be composed of entirely new members. That I suppose, sir, to be the great object of having the term longer in the senate than in the house. It is universal wherever I have been familiar with the divisions of the legislative department in this respect that senators have always been elected double the time of the house of delegates. It was so in Virginia. We elected our delegates for two years and we elected our senators for four years. In other states, sir, where they elect their house of delegates for one year their senators are usually elected for two.

The great object of it, if I understand it, is to have in the subsequent legislature more or less members who are conversant with the proceedings of the previous legislature and who understand the routine and manner of conducting business, so that I apprehend if we elect our delegates for one year and our senators for two, one half of them each year, every guard in reference to legislation will be provided for. For that reason, sir, I made that motion.

MR. DERING. Mr. President, I move, sir, that we pass by this section as a very important one and give the members time to think about it.

MR. STUART of Doddridge. We will have to settle the reconsideration first.

MR. LAMB. I would suggest to the gentleman from Monongalia the question to reconsider had better be acted on first even if the Convention then pass by. That will leave the whole matter open.

MR. DERING. I withdraw the motion.

The motion to reconsider was agreed to.

MR. VAN WINKLE. That I understand leaves the motion of the gentleman from Tyler pending.

MR. SOPER. It stands without the amendment.

MR. VAN WINKLE. Yes, sir; but your motion is before the house.

MR. SOPER. I withdraw it.

MR. DERING. I now move, Mr. President, we pass by this section for the present.

The motion was agreed to; and the Secretary reported the third section as follows:

3. For the election of senators, the State shall be divided into nine senatorial districts, as nearly equal as possible in white

population; each district to choose two senators. Every such district shall be compact, formed of contiguous territory and be bounded by county lines. After each census hereafter taken by authority of the United States, the legislature shall alter the senatorial districts, so far as may be necessary to make them conformable to the foregoing provisions.

MR. HERVEY. I move to pass by this section for the reason that its adoption depends somewhat on the construction of the previous one. We have determined the second section. The last sentence of the third section makes the senatorial districts conform to the arrangements of the second section. It seems to me we would be getting into difficulty by taking up this section and acting on it and leaving the other open.

MR. LAMB. Mr. President, before the Convention acts on that question, I merely want to make an explanation in regard to it necessary to enable the Convention to act understandingly upon it whenever it shall be considered. It must be taken in connection with the tenth section:

10. Additional territory may be admitted into and become part of this State, with the consent of the legislature thereof. And in such case, the legislature shall provide by law for the represensation of the white inhabitants thereof in the senate and house of delegates, in conformity with the principles set forth in this Constitution. And the number of members of which each branch of the legislature is to consist, shall thereafter be increased by the representation assigned to such additional territory.

The nine sections here spoken of within the State are the nine sections constituted by the forty-four counties which according to the resolutions of this Convention are included absolutely in the State. If the counties on the other side of the Alleghany mountains, which are conditionally included, should become part of the State, then under the provisions of this report there would be eleven. Section 10 is a necessary qualification to the other part of the report. The counties on the other side of the Alleghany ridge would constitute two additional senatorial districts upon the same principle and same plan that is adopted throughout this report. There is but one word on that section which is necessarily involved in the minority report, submitted by the gentleman from Kanawha. The Convention, if they saw proper, might strike out the word "nine" and adopt the balance of the section, and leave the blank then to be filled when the minority report came up.

The minority report, I understand, contemplates—how many does it contemplate?

MR. BROWN of Kanawha. The same number that the committee contemplated.

MR. LAMB. There are two plans.

MR. BROWN of Kanawha. But they contemplate the same number of senators.

MR. LAMB. The same number of senators but not the same number of districts, by any means.

MR. VAN WINKLE. I make the motion that so much of this report as relates to representation in the senate and house of delegates be passed by, in order that we may get the report of the minority and have time to look into this apportionment.

MR. HERVEY. I withdraw my motion.

MR. VAN WINKLE. Then I move to pass by all that relates to the legislature until we get the whole subject before us.

MR. STUART of Doddridge. I move to amend that by saying, to pass by the whole of it until we get it all before us. I think we can act better by having it all before us.

MR. VAN WINKLE. Well, I think it will end in that. I will accept the amendment.

MR. HALL of Marion. I would inquire what it is we pass to. I would like to know that before voting on this question. If we have any other matter that is brought before us for action, I might vote for the motion; if not, I cannot.

MR. DERING. I am in favor of passing by the whole report, sir, and request that we shall get a vote on that subject.

MR. BROWN of Kanawha. I think, Mr. President, to waste another hour by adjournment, as we did yesterday, is hardly proper. I think there is a large portion of this report that is not involved in anything suggested in the minority report that we can act upon now as well as ever, and on these sections I think we had as well proceed to work, and I am in favor of doing it. I know no better time than now.

MR. BATTELLE. I really think there is very much of this report that can be acted on now just as well as at any time, and I hope the Convention will do so.

MR. CALDWELL. I see that it is within three minutes of the hour of taking a recess. That clock is wrong by one hour. I do not see the propriety of passing it by.

THE PRESIDENT. It is so near the time the Chair should be vacated that the Convention will take a recess until half past three o'clock.

THREE-THIRTY O'CLOCK, P. M.

The Convention reassembled at the appointed hour, the President in the Chair, who stated that when the house took the recess the subject of consideration was the motion of the gentleman from Doddridge to pass by the further consideration of the report.

MR. STUART of Doddridge. It was the motion of the gentleman from Wood. He accepted the modification of it I offered. He accepted my modification.

MR. POMEROY. I hope that won't prevail. I see by looking at different sections, I think, if we would pass over to about the eleventh section we could then proceed. I hope the motion to pass by will not prevail.

MR. STUART of Doddridge. It strikes me, Mr. President, we could get along much better if we had our report complete and we could commence with it and take it section by section, as the rule we first adopted. We would make time by doing so. I may be mistaken. I desire to make time.

MR. HALL of Marion. If there was anything else before us, I should not object; but as there is not, I do insist we should be at work, and there is no reason why we shall not proceed with that portion of the report not connected with the proposed minority report, which as I understand has reference to only the matter of districting and the number of districts for senators. A considerable portion of that report before us is as ready for us as it will ever be. I am willing to take it crawfish fashion, or any other fashion, so we go ahead.

The motion to pass by was rejected.

MR. POMEROY. I move we take up the eleventh section.

MR. DILLE. Why not take up the ninth section? I see it is—

MR. POMEROY. Well, I think the committee and the Committee on County Organization are rather in conflict there. We passed something in regard to the formation of counties in the Committee on County Organization. I would rather we would pass to the eleventh.

MR. STUART of Doddridge. Has that report been handed in?

MR. POMEROY. The report is made out but not handed in.

MR. STUART of Doddridge. Well, sir, if we take up some other section it will conflict with some other man's report.

MR. DILLE. Why not the tenth?

MR. LAMB. Mr. President, it strikes me in taking up the report, we had better go back to the second section, omitting that portion which fixes the number of the senate and house of delegates, and go along as far as possible.

THE PRESIDENT. What is the gentleman's motion?

MR. LAMB repeated what he had said, and added: I suppose there is enough of that section to occupy the house for the balance of this afternoon. I make that motion.

MR. DILLE. I second that.

The motion was agreed to.

The Secretary reported the section (omitting the first sentence) as follows:

2. * * * * * *. The term of office for senators shall be three years, and that of delegates one year, commencing, in each case, on the first day of October next succeeding their election. The regular elections for members of the legislature shall be held on the fourth Thursday of May. But vacancies in either branch shall be filled by election, for the unexpired term, in such manner as shall be prescribed by law.

MR. SOPER. Mr. President, if it is in order, I renew the motion to strike out "three" in the eighth line and insert "two."

MR. STUART of Doddridge. I would call the attention of the member from Ohio to the fact that this third section was the one reconsidered by the gentleman from Kanawha and we took up the very subject on which he moved the reconsideration. It was made in order that he might present his views on this question and it was passed on his suggestion and he is not therefore present.

MR. SOPER. Mr. Brown is not present, and therefore I think it had better be passed over again.

THE PRESIDENT. Does the gentleman withdraw his motion?

MR. SOPER. Yes, sir.

MR. STUART of Doddridge. I was just calling the attention of the gentleman from Ohio to this fact. I think as a matter of courtesy we ought not to take up this section now.

MR. VAN WINKLE. I can make a motion to amend this, sir?

THE PRESIDENT. The recollection of the Chair is that the gentleman from Kanawha had moved to pass by this section; pending that motion, the gentleman from Wood moved to pass by the consideration of the whole report, and the gentleman from Kanawha accepted that amendment.

MR. VAN WINKLE. The gentleman from Wood moved to pass by all that related to the legislative department, and the gentleman from Doddridge moved to amend by passing by the whole report. But that does not reach the case of the gentleman from Kanawha. He is a member of the legislative committee and he has handed in a minority report, and it seemed proper that the Convention should wait until they got the minority report that they might know what the alternative proposed was. But the gentleman will probably be here in a few minutes.

MR. STUART of Doddridge. What I want to call to the attention of the gentleman from Wood was that the movement to reconsider was made on motion of the gentleman from Kanawha —to reconsider the vote on striking out 2 and 3.

MR. VAN WINKLE. The vote was to reconsider, and the gentleman from Tyler then withdrew his motion.

MR. STUART of Doddridge. The gentleman desired to state his reasons.

MR. SOPER. I have renewed my motion and again withdraw it.

MR. VAN WINKLE. Then there is nothing before the house except to take up the section.

I was going to say, sir, that to save time in a matter in which we do not know that the gentleman from Kanawha has any particular interest, if there is no other motion, that report comes up in order—that I will make a motion in reference to the day fixed for the election. It is fixed for the fourth Thursday of May; and as I understand the Committee on the Legislative Department were of opinion that that time would best suit our agricultural population. The matter was discussed in the committee and they decided that some time in October would be better; and I will move to substitute for the fourth Thursday of May the second Thursday in October. That is a matter, I apprehend, upon which gentlemen could let us know what they suppose would be the wish of their constituents—that is, what time would suit the agricultural population best. The population in the cities and towns of course it doesn't make much difference what you fix. But my own impression is that a day in the fall would suit better than a time in the spring. I will, therefore, move—and any gentleman can move to substitute for my motion another day, unless they prefer the day reported by the committee, the fourth Thursday of May, in the twelfth and thirteenth lines—the second Thursday in October. Thursday seems to be the day for holding elections, and it is better as being farther removed from Sunday.

According to the suggestion of those in my vicinity, I move to strike out the fourth Thursday of May and to insert the second Thursday of October; and, of course, any gentleman, if he chooses, can call for a division of the question, so that the motion may be of striking out; and if the motion to strike out is decided in the negative, it will be indicative of the opinion of the Convention that the fourth Thursday of May is the best day. On the contrary, if it is decided in the affirmative, it does not indicate that they are in favor of the second Thursday of October, for any other day may be named to fill the blank. But if they think the fourth Thursday of May is an inconvenient time for the farming interest—

MR. HAYMOND. I am a farmer when I am at home, and it would suit the farming interest best to have the election on the fourth Thursday of May. We plant our corn the first of May, and the latter part of May is rather an idle time. I am satisfied that is the best time to have the election. In October we are all busy seeding. We could not spare the time. I am in hopes the fourth Thursday of May will be adopted.

MR. LAMB. All I can say in reference to this matter is that the subject was very deliberately considered in the committee. I know nothing at all as to the question which would be the best day to accommodate the farming interest by the object of the committee was to accomodate that interest in the day they fixed. They thought that the day they had reported would better accommodate them than several days that were suggested. I have myself no information on this subject and am not able to speak upon it.

MR. STUART of Doddridge. Mr. President, I am a farmer and sort of a politician and lawyer. I can view the whole ground (Laughter).

MR. VAN WINKLE. You don't know anything about it.

MR. STUART of Doddridge. And I can say to my friend from Ohio he must not accuse me of hankering after the flesh-pots of Egypt because I want to stick to the old day (Laughter). The gentleman proposes to strike out the fourth Thursday in May and insert the fourth Thursday in October.

MR. VAN WINKLE. The second.

MR. STUART of Doddridge. It strikes me the fourth Thursday of May is a time of more leisure to farmers than any other that can be fixed upon. So much for the farmers; now for the politicians. Election comes on the fourth Thursday of May. The citizens of our country meet in the spring with their musters and their courts and they can examine the qualifications of those who propose to ask them for their suffrages—they can see their candidates. Make it the second Thursday in October, the months of August and July come immediately before October and September. But that is a bad time in the year, sir, when people do not congregate together. We never have any musters; we hardly ever meet at court; a man only goes because he has some special business to attend to. And it does seem to me as a matter of interest and policy that we should fix on a time that the people may have more leisure time to investigate and examine the qualifications of persons who ask for their suffrage. That is my honest opinion about it.

Then, sir, if it is as convenient for the farmers on the fourth Thursday of May, it has other advantages that it strikes me ought to be retained. Now, sir, if you want to start out and see your friends, you know we are districted in some considerable boundary of country here. I would like to see gentleman that would have the courage to introduce himself to the citizens of a large district in the month of July. Meantime our citizens would be called on to vote for men whom they never saw. Well, so far as I am concerned, I am always anxious to see a man before I vote for him. I am not anxious for electioneering, but I like to see a man first. Well, I could not be expected that we would have an opportunity of seeing a man in the months of July and August. Why, sir, if we wanted to have a speech from a gentleman in the months indicated, there is no man that could hardly perform the duty. He could not get a congregation to speak to; people would not be out. There would be none of our musters, none of our attendance at court; and the candidates would not be able to see anybody unless they would ride around under a meredian sun from house to house, and then they are engaged in their harvest and do not want to be bothered now, if it is of no importance for the citizens to know who they are called on to vote for, why, then, it is not of any importance when you fix it. But that is an important matter.

MR. MAHON. I can say too that I am a farmer, and I think, sir, that the resolution offered by my friend from Wood county would meet my views as a farmer, and the argument of my friend from Doddridge is a very good one to support my view in reference to the matter. The election coming off on the fourth Thursday in May, in my section of country, I think is very unfortunate. And so far as fixing a day to suit politicians, I am not willing, at least, to inconvenience the farming interest to accommodate them. In our section of the country I find that our crops at this season of the year are advancing and need work. And if we expect to raise anything in our section we have to work our crops; and I have been exceedingly annoyed in May by our candidates visiting us (Laughter). Very much annoyed. Why, there sometimes in our section of the country you will see them every day in the week, and if you are not very careful and go to church, you may see them on Sundays. But, sir, in the fall—say in October—our work on farms there is pretty well done up. Our seeding is generally over by the second Tuesday of October and from the arguments of our friend from Doddridge and from my own interest I shall vote for the resolution.

MR. SOPER. I would remark that there is not a state in the Union in which its annual election is held in the month of May. There are some in which the election is held in March and April and in June a number; and in the months of October and November there are several states that hold their annual elections. So far as the fourth Thursday in May is concerned, it is a busy month for farmers. I am satisfied, too, from personal knowledge, not from any great experience I have had on the subject. And as for the politicians, if they are as vigilant in their pursuit as my friend from Doddridge is, they do not regard rain or sunshine, heat nor cold; and they will accommodate themselves, sir, let the election be either in May or October. I should prefer myself to see November. Say the first Thursday, if you please, in November. After that all farming work is through. The courts are generally through. It is intimated by some gentlemen that we are to have four circuit courts in every county in the year. If so there certainly will be congregations of the people who can well inform us of the merits of the candidates if the election is held in November as well as if in May. Well, then, again, I would have the legislature here commence on the first of January following, if I had my own preference, waiting till all the holidays were over before the legislature met to engage in their business. If we had the election in the latter part of October or the fore part of November, I would prefer to have the legislative year commence the first of January. For these reasons, sir, I shall vote to strike out.

THE PRESIDENT. Does the Chair understand the gentleman as asking to divide the question?

MR. VAN WINKLE. The motion is on striking out and inserting.

MR. SOPER. I do ask for a division of the question.

MR. VAN WINKLE. I should like, sir, to say that I have no personal interest in the fixing of this day, because living in a town one day is the same to me as another. But I would like very much that this day might be fixed in such way as to suit the farming interest; for I have a very strong desire that whenever we do have an election, no matter what, that there should be a full expression of the opinions of the people who are entitled to vote. And, sir, I would add that I was very desirous to hear all the farming interest had to say on this question. I am not so desirous to hear what the lawyers have to say. My friend from Doddridge —and I am sure other gentlemen will agree with me—when he does express himself, he does it after due consideration and with singleness of purpose and only with a view—as I profess myself

—to do that which is best for the whole; but still, sir, he cannot, although he lives in a region of farmers, so we will understand what would suit that class best, which is the one to be accommodated here, as the farming gentlemen themselves; and I hope they will feel free to express themselves on this occasion. Perhaps to a majority of this Convention the day may be a matter of indifference, but to those who represent the great farming interests, in which the bulk of the voters consist, it is important that a day should be fixed that would suit, or on which they could with the least inconvenience to themselves be able to attend the election, so that on every occasion we have a full, free and candid expression of opinion. That is, sir, under the Constitution we have made so far, the principles we have already introduced it is the people who are to govern in this new State, and it is they that are to be accommodated; and I trust hereafter we shall understand at the polls precisely what the wishes of the people are.

MR. HAYMOND. I am still in favor of the fourth Thursday of May. My friend from Jackson says they have to work their corn in the latter part of May. Now, sir, I don't know what time they plant corn in Jackson; but we plant our corn in May and work it in June. The gentleman from Tyler prefers November because farmers have no work to do. I don't know how it is in Tyler, but the people in Marion have to gather their corn in November and that is about as much as they can do.

MR. HAGAR. The gentleman from Wood wished particularly to hear from us that farm. I think there is a better time than May or November either. We usually plant corn in May but sometimes people don't get done against the election and hence they cannot go. Others plant forward and have a piece they are most obliged to work about that time. And then in addition to all this, those who observed several years ago when all the offices were to be filled at the election in May, know that there is a great deal of time lost with the candidates and people in their farming business, and much indeed by the candidates coming; and indeed they were so numerous that it was reported the dogs would not bark at them they got so used to their passing (Laughter). Now, I am of the opinion that August would suit the farmers better—the fourth Thursday in August. The farmers make it a rule to rest in August.

MR. VAN WINKLE. I would simply state the fact that nearly all the southern States elect in August; the western and eastern in the fall—in October. I do not know what the reason is but the fact is that nearly all the southern States from Kentucky down, elect in August. Now, I would like that these farming gentlemen would enlighten us on that subject.

MR. HAGAR. I am surprised that Kentucky hold their election in August. But it seems to me it is the most leisure month. Men get their crops laid by against the last of August and it is too soon to go to cutting up corn or sowing wheat, and I think it would suit the farmers best. Now so far as the politicians are concerned, if they are anxious for office they can go about in the month of August and stop at the farmers' houses under the shade in the yard and they can talk all about it. Hence I shall go for striking out and inserting some other time (Laughter).

MR. SIMMONS. Inasmuch as the gentleman from Wood desires to hear from farmers, I am a farmer and I am really astonished at the gentleman last on the floor for saying that the month of August was the most proper time. I cannot see why it is the case, unless the weather is so extremely warm that they cannot work any there. In our country this is one of the most busy months we have. Our citizens cut little of their hay until after the first of August and during that month there is more made than in any other month of the year. A good many do not finish till the first of September at least. Then their corn is ready to cut and then their seeding comes on and we have no leisure time in the fall of the year whatever. I think the fourth Thursday in May will undoubtedly suit our citizens better than any other month in the year.

MR. STEVENSON of Wood. I don't profess, Mr. President, to be much of a farmer; and I am a good deal worse lawyer; for that I don't know anything about and I know a little about the other. I would just say, sir, that the fourth Thursday of May is the established day of holding the elections in the state. I doubt the propriety of changing it unless for very good and substantial reasons. But if the only one that can be adduced is to accommodate the farmers, I think the reason not sufficiently strong. The fact is that farmers are just about as busy in the month of October as in the latter part of May—at least in the region of country where I live, and I think generally within the limits of the new State. And they are very busy, too, in the month of May. But if the elections are to be held in the spring I think the fourth

Thursday in May is about the best day for farmers you could select. The hurry and bulk of the spring work is over about that time, although there is a great deal that follows it. But there is a space of time between the latter end of May and the beginning of June when they have usually a little leisure. I do think, sir, if there are reasons in favor of changing it, they are not sufficient to justify abolishing the usage which has become fixed in the state. I think it better, taking all matters into consideration to retain the old day.

MR. DILLE. Really, I am very much in favor of striking out. Not that I am in any way personally interested. But so far as I have heard an expression from the people that I have the honor in part to represent, it is precisely that they are opposed to spring elections. And, really, if I was to regard my personal observations on that subject, I am satisfied that spring elections do not suit our people. Really, so far as the region of country where I live is concerned, the people plant their corn during the month of May. A great deal of it—especially new ground—is not planted until the latter part of May, and a great deal of oats is sown in the month of May. Our people are extremely anxious on this subject—a great many of them—they are desirous to have a change. They have been talking about this thing for a year. I am satisfied if I was to fix a day—if I was to consult the interests of the people of Preston county, that the fourth Thursday in October would suit them best, or any time in the month of November. It is said that is a busy time, but look at the character of the work at that time. Our harvests are made. Our harvests are gathered, and the farmer can truly say his harvest is over; and he feels glad, especially if he has a good crop; and he feels more disposed then to attend elections than just on the eve of commencing the labors of the season. He has his corn to cut, it is true; but against the second or even the fourth Thursday, corn is all cut up and ready to be husked; and any farmer has his seeding done against that time—in our country, at least—and has nothing to do only to leave his corn and attend the election. It seems to me it is the most favorable season, taking everything into consideration. Further than that, I think it connects more nearly with the year upon which its officers will enter upon their duties. Now, I am like my friend from Tyler; I would suggest that these officers enter on their duties about the first of January. Or supposing they enter on them in October; there seems to be a long interval between the time of their lection and the day they enter on the duties of the offices for which they are elected. I would suggest that, really, it would be better that the space of time between the period when these officers are elected and when they enter upon the duties should be diminished rather than increased. I am satisfied that October is the most favorable time and shall vote for striking out.

MR. SINSEL. So far as I am concerned myself, it would make no difference to me spring or fall; but as I contended strongly for the fourth Thursday of May in the committee, I would fail in the discharge of my duty to say nothing here. I contended for it simply because I believe it suits the farming interests that I represent better than any other time. People in that country, some few of them, all commence planting their corn the last of April and finish sometime in May. Well, there is a little space between the time that they finish planting corn and the time they commence working it that they have a little leisure. It is true, those who plant very early will commence working it before the election; but they are comparatively few. Well, all along that will be the case—all along the mountain regions. The counties bordering on the Alleghanies, they do not think of planting corn there before the 20th or 25th of May and will not commence working until after the first week in June. It may be a little different with the counties lying along the Ohio river. Well then, in the fall they commence in the latter part of August and September to break their fallow, sowing their wheat, getting out their grain, and by the time the second Thursday in October comes round they are busily engaged in cutting up their corn and saving their fodder. It is right in the midst of it. And I think the fourth Thursday of May will meet the wishes of the people I have the honor to represent better than any other time.

MR. VAN WINKLE. I was a good deal anxious, sir, the farming interest should have settled this question for itself, but what we have heard reminds me of an anecdote of an agricultural community that hired a parson to attend to their religious matters. And particularly, they made a bargain with him that he should pray for rain whenever they requested it; and I suppose it was implied in the bargain that he should procure the rain. His wife attempted to dissuade him from entering into such a contract. Nevertheless, he made it. Well, in a week or two there came a dry spell and they called upon the parson. Well, he summoned them to meet him in the church; and he told them as a preliminary that it was necessary they should agree on the day when they wanted the rain. Well, one of them proposed they should have the rain on the following Monday. Well, Jones said on that day he had his hay to haul and it wouldn't suit him at all. Then Tuesday was proposed, but Mr. Smith said Mrs. Smith had arranged to go and visit a family on Tuesday and it would be a great disappointment. Well it went on time to time, and the parson had a very easy time of it for they never agreed when they wanted the rain; and I am afraid it is so with our friends, the farmers, about this election (Laughter). It is said that no kind of weather suits the farmer, and I am afraid it is pretty much the case in fixing an election day and we gentlemen of the Convention who are not farmers and do not understand the thing will have to vote pretty much at random (Laughter). I think perhaps we might as well take the vote (Laughter).

The motion to strike out was rejected.

MR. LAUCK. Would any motion be in order in reference to this matter? I just came in; but I learn from the discussion that it was in reference to the matter of the time of holding the annual elections.

THE PRESIDENT. I would inform the gentleman from Wetzel that the question just disposed of was a motion to strike out the fourth Thursday of May with a view of inserting another period, which motion was lost.

MR. LAUCK. I rise, then, to make this inquiry, can any other motion be made now or is that day settled and fixed?

MR. VAN WINKLE. It could come up when the question comes up on final passage but not now.

MR. LAUCK. I think the holiday times would be a good time to hold elections.

THE PRESIDENT. The report will be passed over again, and there will be other opportunities.

MR. VAN WINKLE. Mr. President, the fourth Thursday of May being now, as I consider, fixed, I will move to change in the second clause—the term of senators shall be so many years and that of house of delegates one year—commencing on the first day of October. It seems to me the interval between the fourth Thursday of May and the first Monday of October is longer than necessary. I would move, sir, in a patriotic spirit, that they commence on the fourth day of July next succeeding their election. The necessity of this is proved by a circumstance of recent occurrence in the history of this State. I think it was in 1857, when the commercial revulsion took place, which commenced with the failure of the Life and Trust Company of Cincinnati—which was a New York institution, however. The banks, many of them, suspended specie payments, including banks in Virginia. Circumstances were such that in the opinion of the executive an extra session of the legislature was required. He undertook to call it and the question immediately arose and was discussed considerably in the papers throughout the State, and it was which set of representatives should be convened. Elections had been held in the preceding spring, and there was nothing in the existing constitution to determine when their terms commenced. It was finally decided that the terms of the first set did not end until the first of October. I do not remember on what ground but probably because the fiscal year ended at that time. The result was that the old legislature were convened to meet at that extra session. Well, if another case of that kind should arise it certainly would seem to be better that those who had been elected most recently and were freshest from the people should constitute the legislature for such a purpose; and that, sir, is the ground of my motion that the fourth of July would not be too soon for their terms of office to commence. The change could take place on that day; and if another case such as I have adverted to arose, the matter would be abundantly settled on the face of the Constitution and if the governor had occasion to call such an extra session, he would call the legislature most recently elected.

MR. LAMB. The explanation in regard to the intention of the committee in fixing a day has already been given by the gentleman from Wood. It was that the term of the legislature might be so fixed in the Constitution that in case it became necessary to convene a special session, there could be no doubt which set of legislators would be convened. It was fixed on the first day of October by the committee with reference to the commencement of the present official year, and with the expectation that some uniform fiscal year would be fixed not merely with reference to the legislature but with reference to all other officers, at which official terms should commence and terminate—the executive officers, judges, etc., to have one uniform and official year. With the present official year the first of October is the best time I cannot say, or what was the special reason for fixing it at that time. But there should be some day at least that we could follow; some uniformity in this matter; and have one day fixed for the commencement of the official year and carry that through if we can.

MR. CALDWELL. My recollection is, sir, that before we took a recess this section was passed by. I did not suppose it was to be taken up until we had the balance of this report before us. I would prefer that we had all the report printed so as to examine it before we acted at all on the report; and that was my understanding this morning.

MR. VAN WINKLE. It was taken up by the Convention. I apprehend, sir, that the naked question now under discussion should not be affected by anything that is in the other report, so far as we have had an intimation of the contents of it, and it is one while we are here we may as well dispose of. I think we will rather save time.

THE PRESIDENT. I would remark to the gentleman from Marshall that when the Convention took a recess it had under consideration the proposition to postpone; that that was not then decided; and it was acted upon in the evening session. The subject now under consideration in the opinion of the Chair would not be affected by the report, as he understands, that is to come in yet. The gentleman, however, could effect his purpose, if he chose, by a side motion.

MR. CALDWELL. I would prefer that this section should pass by. I am with my friend from Wood in the first motion he made, about the day of holding the elections. The evidence before me is that it was a close vote in which the other side decided against the propriety of striking out. I only regret that when my friend from Wood made the motion he did not use the argument he made when last up, because I think it goes to show the propriety of changing from spring until fall. I would therefore ask my friend, sir, if it would suit him to defer this matter until this section comes up regularly again. I want to give the members of the Convention an opportunity to reflect on the subject. I am so strongly inclined to the opinion, sir, that the fall is a better time for holding the election than spring, that I desire an opportunity given to the members to reflect on the subject before it is finally decided; and until that is definitely decided, we cannot, I think, fix the time for the commencing of the terms of these legislators.

MR. VAN WINKLE. My own impression, Mr. President, is that it is of more importance that a time should be fixed in the Constitution than as to what precise time it shall be. I, of course, would be willing to defer to any gentleman who is not prepared to act on the question, though it still seems to me almost isolated and not dependent on other questions not likely to arise. We know that custom, habit and the very condition of things is so arranged that the legislative sessions will be held in the winter undoubtedly. I believe there is not an exception to that unless in a single state that holds two annual sessions of its legislature (Connecticut) in the United States. And it is only in reference to the possibility of an extra session of the legislature that this becomes important.

I, of course, do not want to thwart any gentleman's views; but I am not myself convinced that there is any impropriety in acting on this at this time.

MR. LAMB. Mr. President, I would suggest that after we get through with this, the question comes up on the adoption of the whole report our rules have secured to any member the right to move amendments at that stage of the proceedings. The votes which are taken at present are nothing more than a mere indication of the present sentiments of the members of the Convention. Each man will be, of course, at perfect liberty to alter his opinions on any subject on which he votes and to vote differently next time. The matter is not irrevocably fixed at all by any vote we have taken. But if we are to consider the report at all, I would like to gather in this stage of the proceedings as well as we can what are the sentiments of the members of the Convention about these points about which I myself know very little. I may, perhaps, refer to one fact in this connection: the Committee on the Executive Department, in its report, fixed the first of January as the commencement of the term in that case. Whether it would not be better to have a uniform official year will be for the Convention to decide.

MR. STEVENSON of Wood. I do not know that I exactly understand the amendment of my colleague in reference to the official year beginning on the fourth day of July.

MR. VAN WINKLE. The members of the legislature elected on the fourth Thursday of May will be members on the fourth of July and in case an extra session is called those members would be summoned to the seat of government. As it stood, it was in doubt which, the old members or the new, should attend.

MR. POMEROY. I hope we will pass over this, Mr. President, owing to circumstances now before us. If the Convention, as suggested by the gentleman from Marshall—if when there is a full Convention they should concur and fix some day in the fall of the year instead of May then this motion of the gentleman from Wood would not appear to be appropriate. I notice that the gentleman from Kanawha is in now, and we could take up the other section which we had under consideration, which would consume the remainder of this evening's session no doubt, and then we would be able to take the sections as they go.

MR. STUART of Doddridge. I hope we will not pass it, sir. We have now had it under discussion some time and it does appear we discussed the day of holding the elections as long as we pleased. I confess I was sufficiently used up (Laughter).

MR. POMEROY. The gentleman from Doddridge did not understand me. The question we wish to get at now is a motion made in the forenoon session by the gentleman from Tyler to strike out the word "three"; and that was reconsidered and it was passed by in the afternoon session in order to accommodate the gentleman from Kanawha, at whose instance it was reconsidered, and it was thought proper not to take that matter up in his absence.

MR. STUART of Doddridge. We have progressed with the discussion in this matter, and let us decide it while we are at it.

THE PRESIDENT. The Chair would remark to the gentleman from Hancock that it is the understanding of the Chair that these matters so considered in the report can again be reviewed when we are passing over the report and that the changes that members may now wish to introduce out of place can then properly come in again as they did on the other report. And it is an unfortunate state of things when they call up so many motions as they do; and the Chair would request members of the Convention when they rise while another is on the floor that either the one or the other will give way. The Chair has found it often the case within a few days back that two members are standing at the same time speaking. If the member who has the floor intends to give way, he hopes it will be promptly done. If not so, he hopes the member who rises to the inquiry as soon as he sees that the other does not give way will take his seat. Of course, no complaint is raised in this.

MR. BROWN of Kanawha. I desire to acknowledge the kindness and courtesy shown to me in my absence. I have just learned the subject under consideration, to strike out Thursday of May and insert October, and it strikes me I shall vote for striking out and inserting.

Mr. Van Winkle's motion to strike out first of October and insert fourth of July was then put and agreed to.

MR. VAN WINKLE. I should like to ask the consent of the Convention—I want to introduce what is probably a new rule of order here. I am reminded of it. I had drawn this resolution in the course of the morning and I am reminded of it by the remarks of the President—in reference to another portion of those remarks—that there is a certain responsibility devolved on the President and I should like that he would assume it. When two gentlemen arise, it is the express duty of the President to decide between them; and when it is not very palpable who did rise first, the parliamentary rule is that the gentleman farthest off has the floor. We feel, sir, that we have our responsibilities, and we only want the Chair to encounter his share of the responsibilities. I, however, am reminded by the remarks of the Chair of an opinion that has struck me two or three times, that the members generally do not seem to appreciate the condition of these debates. To those who are familiar with legislative proceedings, there is no trouble; but as many of us are for the first time in a deliberative body, it may be more difficult. We have substituted for the committee of the whole a form of proceeding which answers the purpose—I think a great deal better—and is not liable to many of the objections which attach to it. That is to say, in reference to these reports that are made from the various standing committees, these reports are precisely in the condition of a bill brought into either house of the legislature to be made into an act. They have their three readings in those bodies. On the first reading amendments are in order, on the second reading amendments are in order; and on the third reading amendments are also in order but very seldom offered. We first come up with these reports, crude it may be. The committee no doubt have endeavored to make it otherwise; but with the variety of opinions that must prevail it must not be supposed that any committee is going to hit the mark in every instance. We take it up section by section; gentlemen propose amendments; and, as has been said, it is usually allowed the friends of the measure—the committee and some others probably uniting with them to procure that measure—to add any amendments that circumstances seem to demand. The view in which every gentleman should consider it is this: if this section pass, although I am opposed to it as a whole, yet in what form would I prefer it? I might be opposed to the section we are discussing and yet if there was a possibility that it might pass this body I would still have my preferences as to the form in which it should pass. If these days are to be fixed, I might have a preference for a day and yet I might be of opinion that no day ought to be fixed. But still, if a majority are interested in fixing a day, still I am interested in saying what day shall be fixed. Well, our rule is that it comes up again on the adoption of the whole report; and when it comes up, then any gentleman is at liberty to strike out and insert. Now, sir, on that second consideration of a report there will the test question be; and it is in reference to that, that I wish to offer a resolution that I hold in my hand. A third consideration will be given to it after the committee on revision has acted on it and while only, perhaps such amendments will then be in order as relate to matters of verbiage and form, yet still it will be about equivalent to a third reading of a bill in either house of the legislature. The members, then, have three opportunities to get the report into a permanent shape. Well, sir, as I do not consider that the action on the report on its first reading is of such importance as to call for a great deal of discussion—or feeling, at any rate—on the subject, I have prepared a resolution with the hope of expediting business, considering that on this first reading—what I call what we are now doing—it is not so important what is then done, because the matter is again to be revised by the Convention. That resolution I will read.

"RESOLVED, That on the first reading by sections of a report, from a standing committee, it shall not be in order to call the ayes and noes."

A gentleman offers an amendment to a report on its first reading with a view of perfecting the section. If that section is to become a permanent part of the Constitution, he would like it as perfect as possible, while at the same time he will be opposed to the whole section. I think, therefore, sir, that it is not necessary, nor does not indicate what the ayes and noes are generally called for—in order to test the final opinions of members—that they should be called upon the first reading. I drew up that resolution from finding one in the journal of the convention of 1850. They went into committee of the whole. They prohibited the calling of the ayes and noes in committee. I believed they are not called in Congress when they are in committee of the whole. It will certainly save time to dispense with them on this reading. When it comes up on the second reading, and other provisions have been adopted it will indicate what shape the report will take; and no member can finally make up his mind until the whole report on the subject has been considered. I think the members will find that the resolution I have offered will do injustice to none, it will be a test of their opinions under the circumstances but not a final test of what they would wish. After we have licked it into shape—after we have considered the various items and points, then the report comes up to us as a whole. What may have been objectionable in the first instance, may by the introduction of amendments in other parts of the report have become acceptable to us. What we may not have seen the necessity for as an individual proposition we come to see the need of after other provisions have been introduced. And I think, therefore, sir, the Convention will probably agree with me that as the ayes and noes are only called to test the actual opinions of members, that they will be willing to dispense with that call on this first reading.

THE PRESIDENT. Does the gentleman from Wood propose to lay on the table and take up this resolution?

MR. VAN WINKLE. It is a question of order and I don't know but it is always in order.

MR. HERVEY. I would call the gentleman's attention to the nineteenth rule and inquire whether it could be set aside in that way.

The secretary read rule nineteenth as follows:

"Any member (seven others concurring) shall have a right to demand the ayes and noes upon any question, at any time before it be put, and in such case, the names of the members shall be called by the secretary, and the ayes and noes entered respectively on the journal; and the question decided as a majority shall thereupon appear. But after the ayes and noes are separately taken, and before they are counted and entered on the journal, the secretary shall read over the names of those who voted in the affirmative, and those who voted in the negative, in order that any mistake in the listing of the names and votes may be corrected."

MR. VAN WINKLE. My motion is to amend the rule by inserting this as an exception to that rule. I stated when I first arose that I wanted to amend the rule by introducing this. The rules are always in the power of the Convention.

MR. HERVEY. Yes, sir; but they could not be set aside.

MR. VAN WINKLE. I move to amend the rule by adding, except in such and such cases.

MR. STUART of Doddridge. I desire to call the attention of the Convention, and I think if they will reflect on what has passed they will vote against the resolution. I believe we have taken up but one report and gone through that report. I recollect that was the report of the Committee on Boundaries. Well, sir, after we got through it section by section, we turned back. Well, sir, I believe there was little or no amendment; a great many questions raised, and argument. I for one was very desirous to see the yeas and nays on a great many questions raised which would not have been called out if the yeas and nays had been called only on the final passage of the report. We may be willing to vote for the entire report, when there are many features of it we would vote against and think very objectionable and desire to see the yeas and nays taken upon.

MR. POMEROY. I concur very fully with the gentleman from Doddridge there may be sections in a lengthy report like this that we may all approve of and yet the report, when it has all been gone through with when the yeas and nays would be required, might feel constrained to vote against the whole report, or in favor of it while there were certain sections we did not approve at all. The report having all the sections together might be of such a character that I would feel constrained to vote against it and record my vote; and yet there might be certain sections that I might desire to have my vote recorded the other way. On the boundary question, there were different sections on which we wanted to have our votes recorded, and we will perhaps look back with pleasure to that record. Now, if it was in regard to particular clauses of a section, I would offer no objection to the plan proposed by the gentleman from Wood; but I think members will find they will consume more time if this plan is adopted than by the present; because if a member feels that a certain resolution is contrary to his wishes, when it comes up on the second reading he will feel bound to offer an amendment and on that amendment will feel bound to call for the yeas and nays.

MR. VAN WINKLE. It does not prohibit on the second reading.

MR. POMEROY. But we would consume as much time on the second reading as on the first. After we pass through a section, I think from the past experience of this body, those of us that are out-voted feel disposed to submit and let the thing pass. Sometimes we vote with the majority and sometimes with the minority; but sometimes it is a very difficult matter, and difficult for the Chair, by the saying of aye and no to decide which is the majority. He says he thinks the ayes have it by the sound, or the noes; and it is very easy to be mistaken in regard to that. Different times I listened with all my ears and I could not tell which party was in the majority; and I think the most proper way of taking the vote on an important matter, where there is some great principle at stake, that we ought to require the yeas and nays, provided the constitutional number required by the rules second the demand. And I feel constrained to oppose the motion of the gentleman from Wood.

MR. VAN WINKLE. I think the gentleman from Hancock does not appreciate my reasons. I say that in voting on a first reading the gentleman is voting on a hypothetical proposition. That is to say, a gentleman considers this: if this resolution, or this section, to which as a whole I am opposed, is to pass, I nevertheless wish it to be modified; I wish it, if it is to pass, to be brought into the least objectionable shape possible. Therefore, I say that a gentleman's vote upon the first reading does not indicate his real opinions of the merits of the section. Now, here is a section that a large minority of the Convention may be opposed to, as it turns out in the end. Nevertheless, a member says that that resolution may pass, and if it is to pass there is some feature in it that is more objectionable than it might be made. He therefore moves to strike out and insert something by way of making it more palatable to himself. He votes on the hypothesis that it is about to pass. Nevertheless, it may be stricken out. The gentleman from Hancock seems to misapprehend this; that when we come up on the second reading we have by a rule adopted in the beginning in deciding between the committee of the whole and another form of proceeding, the question is not solely on the adoption of the report as a whole; it is allowable for any gentleman then to move to strike out and insert. Now, we will suppose that a section was in the original report. We will suppose that the gentleman himself was opposed to it but nevertheless that he could make it less objectionable only to him than it was as reported, but on the whole he is yet opposed to it. He then moves to strike out this section. And there they vote their actual opinion as to whether that should be retained as a part of the Constitution or not; and there it is fair that their vote should go on record and be transmitted to remotest posterity. But is it as fair that gentlemen in voting upon expediency simply, or upon hypothetical supposition, that the section may finally be adopted—is it as fair that their votes should be recorded? I make no objection to the recording of any of my votes. But the calling of the ayes and noes occupies considerable time, and it is frequently resorted to for purposes of delay in these deliberative bodies. I object to no delay when a good end is to be attained by it, but when delay is sought for purposes of delay I do object. And as the vote on this first reading actually determines nothing I can see no use in occupying time in calling it. When it comes up on the second reading, any gentleman is at liberty to strike out the whole section, and then we come to the scratch. There, sir, I can see if any gentleman desires the ayes and noes that he should have them. But I only beg leave to say that in the course of my parliamentary experience I never called or seconded the ayes and noes and never called or seconded the previous question; and I do not think I ever shall.

MR. POWELL. I would make this inquiry; if any part of a section is stricken out on the first reading, whether a motion to insert that on the second reading would be in order?

THE PRESIDENT. The rule provides that.

MR. POWELL. That was what I wished to know.

MR. PAXTON. Mr. President—

MR. BROWN of Preston. We ought to keep our rules. I do not think that gentlemen in this Convention should be deprived of the privilege of placing themselves on the record on any question that may be presented for the consideration of this Convention. The rules under which we are acting gives that privilege and I am entirely opposed to changing them. Besides, sir, if we spend our time discussing side questions in this Convention, I do not know but we will be here till next spring; I can not tell when we will get through the labors of this Convention. I think the Convention ought to devote itself exclusively to the matters properly under consideration and observe the rules we have adopted and to let every gentleman on this floor have the privilege at any time and upon every question that may be presented to the consideration of the Convention to call the yeas and nays and place themselves upon the record.

MR. PAXTON. I was about to remark, sir, that I thought the proposition of the gentleman from Wood was liable to some objections. The object, I suppose, in demanding the yeas and nays is to put upon the record the opinions of members of any proposition. Now, it appears to me that it might happen on the first reading of a report that it might contain a section or several that were independent propositions and on a motion to strike out one of these propositions it might be very desirable to have a record of the vote. If members have not the privilege then of calling for the yeas and nays and it is stricken out at the time by the ayes and noes, you will observe that it will be impossible afterwards to put that vote on the record. That is that any proposition that any gentleman is desirous to exclude from any section is before us for action, on a motion to exclude that proposition any member should have the privilege of calling the ayes and noes; otherwise, the proposition carrying, there can be no record afterwards. Of course no one would call it on the second reading on a proposition that had been excluded on the first reading.

MR. STUART of Doddridge. I feel some interest in this matter, and I know that a practical illustration will show this thing. In order to show you, sir—that—I must be permitted to say the motion of the gentleman from Wood is for the purpose of facilitating business and getting along faster than we do now. But still I want to show wherein I think it will operate grievously. Now, for instance, in our first report on boundary we struck out one section embracing a certain section of country by a large vote. Now unless we had the privilege of calling the vote on that, some man would have to have made that motion to have brought in that section again on the second reading in order to place himself on the record.

The vote being taken, Mr. Van Winkle's resolution was rejected.

MR. CALDWELL. I believe the second section is before the Convention.

MR. LAMB. There was an amendment proposed this morning to strike out the word "three" and insert "two".

MR. BROWN of Kanawha. I rise to inquire what is the precise question.

THE PRESIDENT. The proposition is to strike out in the eighth line the word "three" and insert "two".

MR. BROWN of Kanawha. I move, then, to amend the motion by inserting "four" instead of "two".

MR. HALL of Marion. I ask for a division of the question.

THE PRESIDENT. The question will be first on striking out.

MR. LAMB. I can only state that there were different opinions in the committee. Some preferred "four". I myself preferred "two". And the matter was finally fixed at "three" by way of compromise.

The motion to strike out was agreed to.

MR. SOPER. Well, sir, I now move to fill the blank with "two".

MR. BROWN of Kanawha. I move to amend that insertion by inserting "four". I desire to say that in forming a constitution, if it is the purpose to establish any distinction whatever between the two houses of the legislature, a distinctive feature of that difference is in time—the duration of the office.

We elect them by a very little larger constituency. I have no doubt the constituency of the senate will be as closely compacted together, just as the constituency of the delegate is; and there will be then three chosen by the same interests, representing the same interests, coming directly from the people; and the great object of the senate, as I understand, is to furnish a body of mature years, of long experience, and whose term of office by being longer removed from the electors will constitute them something of a check balancing the other house which is always emphatically influenced by an expression of popular sentiment. Whatever party prejudice has the control at the time is felt in the house. The very object of the senate is to correct that evil. That is always one of the evils in question. The great distinctive feature of English liberty and French freedom is that one has two houses, the other one.

France with her 700 members assembled was nothing but a mob; and whatever passion swayed the hour shaped the legislation. But in the English government, freedom was secure, stability was secure, and permanency in all their legislation. Our ancestors, in keeping with that form of government, have established a senate. In doing so, they gave it six years of duration, and they chose to distinguish it by all the characteristics possible to secure to it wisdom and durability and grave consideration, that it might be a check and security to the people on the action of the popular assembly. And experience has shown that it was a very wise provision. Now, sir, we are copying after the same great examples. We are establishing an assembly that is to be more removed from immediate connection with the people; the principal object of which is to be a check, to secure besides the wisdom, a check on the hasty action of the house. Without that we might abolish the senate altogether. The house will always express the popular will. The senate is a mere incubus unless you are seeking to secure durability in a body before which everything must pass in becoming a law. Our ancestors even gave to the President the veto to stop the hasty action of the house; and experience has shown the wisdom of that. Now, when we are attempting to reduce this to two years or three, we are forgetting the lessons of past experience —throwing aside that which in times of excitement we may find essential to the permanency of our institutions.

These are the reasons that induce me to urge the adoption of four instead of two.

MR. SOPER. It is true, sir, the object of electing the senate for a longer term than the lower house is to prevent hasty and improvident legislation; to act as a check upon the body elected annually.

Yet, I believe, sir, so far as my observation has extended that the term of the senate has generally been double that of the lower house.

Now, let us see, sir, whether that arrangement does not effect the object. According to the proposition that I intend to carry out, one half the senators should be elected yearly. The other half will remain in office for two years. The house, I assume, is elected annually. So that you will see, sir, that there will be at all times one half the senate holding over, having the experience of the former years legislation. Being removed from any immediate excitement which might influence the election of the lower house, that part of the senate, being one half, I suppose to be a present safeguard, because it would be improbable to suppose that there would be an entire change in the election of the other half. The same men, probably more or less of them, would be re-elected. If not there would be some holding the same views of those that remain in the senate; so that there would be a majority in the senate to guard against any imprudent measure that might originate in the lower house.

But, then, again, sir, suppose you elect for four years. And suppose, if you please, that at the expiration of the four years, you elect them all at once. You get an excitement in the country in which your house and senate are both under the influence of the hasty excitement. What condition would the country be in then? And, then again, sir, suppose we should be so unfortunate as to elect gentlemen for four years and after we had had the experience of their legislation for two years the whole country would be dissatisfied and would demand an entire change of men and measures, why this senate could defeat the will of the whole people if so disposed. I am satisfied from the observation that I have been able to make in relation to these matters that a senate elected for double the time of the lower house, particularly if one half are elected yearly, is always a safeguard against any improvident legislation and more certainly carries out the public views and interests. Again, you perceive, sir, that if this senate should act improperly, on the second year the whole question would come back to the people and if men representing the same views should try to effect the same object you have an election twice from the people. I insist upon it, sir, that is an expression of the public mind upon the question that ought to be regarded as the law of the land. For these reasons, sir, I hope the amendment will not prevail.

THE CHAIR. The question is on the adoption of the amendment to the amendment.

MR. LAMB. Mr. President, I wish to make a remark or two on the motion before the house. I observe, in looking over the constitutions in the books, that in all the New England states without exception the term of the senate is one year only; in eleven other states, the term is two years. In three states, it is three years. So that in twenty different states it is less than four years. What has brought my mind to the conclusion that four years is entirely too long has been mainly what has occurred recently in Maryland.

I have looked—and we have all looked—with exceeding great anxiety until the late legislature of Maryland could be got out of office. And a majority the other way. If the expiration of their term had been fixed for a more distant time, Maryland would in all probability have got into the secession ranks unless held back by force. A long term does very well when we have got the right men there; but occasionally that will not occur, and the object should be to fix such a period as will bring the senate, as every other power in the Commonwealth must necessarily be, within the power of the people. It strikes me that two years is long enough. By the constitution of two bodies, one composed of a few members and feeling more sensibly, therefore, in each individual the sense of his own responsibility for correct legislation, we at least accomplish the great object, I take it, which occasions the legislature to be divided into two branches; that every law that is proposed and passes that legislature will be more closely scrutinized in one body or the other, although they cannot have very distinct and separate interests. If we carry out the principle of the gentleman from Kanawha, we must inevitably have distinct interests represented in the two bodies. To carry out that principle to its fair and legitimate result, we must have a house of lords, and then we have a distinct and independent body. But we do accomplish a good deal in securing the careful examination of every law by two distinct bodies of men, one of whom is to be a small body and will therefore feel more sensibly the responsibility the individual incurs should any errors of legislation escape them.

The question was taken and the amendment rejected.

The question recurred on the motion to insert "two years".

MR. DILLE. Mr. President, I propose to fill the blank with "three years". Without discussion, I prefer that period to any other.

MR. VAN WINKLE. I must confess, Mr. President, that I am not prepared to vote on this matter. I wish to know in reference to it what is to be done in other respects. I wish to know more about how this senate is to be constituted before I can vote on the question of how long they are to serve. I agree with the gentlemen who have spoken that there should be a considerable distinction between the members of the two houses. It is entirely useless to have two houses of the legislature if they are both constituted in the same way precisely. There is no chance that you get a different opinion from one from what you get of the other. I have had occasion to think a great deal on this subject. While it is not necessary to constitute a house of lords, or constitute an aristocracy who make a house of lords—while we cannot divide our State into permanent divisions bearing such relations to the whole as the different states bear to the United States—it may be a question, sir, whether we cannot in some way introduce a principle which will make this second house as valuable to us as the principle of the house of lords is in the legislature of Great Britain. If I can understand it at all, sir, the advantage of the second house is not that members of the second house need take a different view of the subject that is presented; because they may arrive—and must if the action of the two houses is consentaneous, they must arrive at the same conclusion—but that they must necessarily look at every question that is presented from a different point of view from the other house. Thus, the aristocracy of England being a distinct class, representing peculiarly the agricultural interest under certain laws and customs that have descended to them from their ancestors, have yet in common with the great mass of the people an interest in promoting the prosperity of the whole kingdom. Yet they have that peculiar interest of their own which insists that they should look at the question in a different point of view. And, now, do not gentlemen perceive at once that if the two houses regard the question from different points of view, the chances that the act thus passed is a wise act are much greater. Again, we send our representatives to the lower house, of course representing limited districts of people, fresh from the people, with a short period after which they return for re-election or reprobation, as the case may be. They represent that great democratic interest, the whole population. But we have another house, the senate, composed of representatives of states; and they, owing to their position being there to protect the interests of state rights, as they are called, against invasion, necessarily also look at every question from a different standpoint; and if the two houses agree we have some guaranty, at least that there is some wisdom in the measure passed. But taking the senate and house of delegates of Virginia, as constituted for years past—of the various states of this Union as many of them are constituted—and what reason is there to suppose that the point of view is different in one house from the other. What benefit is there to induce us to pay the expense of an upper house? Their conclusions will naturally be the same; and we have no benefit from the additional expense except delay in legislation.

But, sir, the question arises—and it will come up in other points besides this—how our senate should be constituted? Cannot we create a senate here for this new State that shall necessarily from the mode in which it is constituted be compelled to regard these questions which will come up for legislation from a different standpoint from the house of delegates? If we can create such a body we make two houses who must approach the consideration of these questions by different roads; look at them in different aspects; be governed by different but not antagonistic interests; and then when an act passes both houses, we have some guaranty that it is more than the effervescence of the moment; not passed upon from impulse, but well considered and weighed; and that objections that may arise, not only from one point of view but from the other, have been obviated before it was permitted to pass.

I gave this subject much consideration in 1850. I was anxious then that the senate of Virginia should be constituted on a different basis from that of the house of representatives. But I can only say that party politics came up and that was the principle on which it was constituted. And so was the house of delegates—on party principles. It was a perfect gerrymander. Counties were hitched together to produce a majority for one party or the other and not for their interests or what was just and equitable throughout the State. Now there are no very lively party feelings and we can approach this subject without regard to party views; and I wish that in making these distributions we could make a rule that would be permanent and prevent anything like this hereafter. Our State is likely to grow rapidly in population and the committee have fixed the period at ten years—that is when a new census is taken—when a reapportionment can be made. We cannot avoid that; and we cannot foresee that if we constitute districts now that they will remain equal at the end of ten years; and perhaps that is as long as we ought to trust to it. Some counties will increase more rapidly than others and, of course, inequalities will be produced. By making these districts as large as possible, the chances that they will remain more nearly equal will be increased; but changes will be necessary at that time, I have no doubt.

My mind is drawn to this circumstance as inducing or tending to something like that difference with regard to the measures proposed for action in the two houses, which I believe is the benefit of having the two houses. I thought that if these counties were grouped together with some regard to their commercial interests—the governing interests of the country; grouped together with some reference to their centers of trade, to their relative situations as to water-courses, and so forth, that then you might find something like the senate which I have indicated is found in the government of Great Britain and in the government of the United States. Here you would have one district with its commercial center at Wheeling, another at Parkersburg. There would be somewhat of a diversity of interest between these two and between all in the same way; not an antagonism of interest, but a diversity of interest such as would insure you that the representatives from the two districts would at least look at matters from different points of view and different from those of the delegate districts.

I will not take up the time of the Convention, sir, by going fully into this subject as I might. I merely wish to indicate to them now that there are principles involved in this thing that ought to be regarded; and if they fix their mind definitely on the point of so constituting these two houses as to give safety to us in the legislation they are about to enact, it may prove to be a very wholesome arrangement in the future. We must be safe from the peril peculiar to democratic governments of impulsive and hasty legislation. They act like the people they represent—from the impulse of the moment; but if with a conservative body such as the senate may be made, time is given to reflect, their action is revised; and while they are still anxious the measure should succeed, they find it necessary to take from it its objectionable features and then only will the conservative body let it pass. There is great safety in this; and if we have not succeeded in enacting the mode in which this safety may be attained, there may be some other; to which I beg to call the attention of the members of the Convention. Let us see, at least, if we cannot constitute this senate in such a way as that it shall operate as a fly-wheel in the government to hold back when there is occasion and to drive when there is occasion to go ahead. I do not mean that the senate is to stand there as a check on the action of the lower house; but to steady that action; to prevent it from being premature and hasty; from being founded merely upon impulse and to give time for consideration without any unnecessary or extraordinary delay. I think such a thing can be done; and I think it is important we should give to what we are going to call the upper house of the legislature something which will make it distinct from the other body; a character which may be recognized throughout the State that will be known as the conservative body and one on which we can rely to protect us from the effects which are always attributed to a democratic government of hasty and ill advised legislation.

Now, sir, these remarks may seem foreign; but if you constitute this senate and these districts as they seem to be constituted, so far as I can perceive from the hasty glance I have given them, with a view to these different senatorial districts having a common interest; that is to say, that each of these districts, perhaps, has its own interests which may be separate from the rest but yet are not necessarily antagonistic. It has been a great feature heretofore in reference to the perpetuity of our United States Government and the prosperity of the people under it that there is precisely that diversity of interest which has tended to insure us always safe legislation. Louisiana has very different though not antagonistic interests from Maine. They will, of course, look at legislation from different standpoints. And in that very diversity of interests we find our safety. And I believe this form of government for the United States might be adopted over the whole continent with safety. The system is a perfect one. We want to resemble that to some extent in the State. Then, we get not a permanent division of the State into senatorial districts; I wish we could. But we get for the time districts that have this diversity of interest.

Still another thing that tends to give the senate this character is that every senator is elected not by a single county but by a number of counties; that is, a much greater number of voters. The committee have it about five delegates to two senators. But a much greater number of voters must enter into the election of a senator. He therefore represents a much larger district; and he may find pressing upon him in the discharge of his duties a diversity of interest in his own district. Here is some safety. Another is that you go a longer time to the senate. That is important unquestionably, and if united to these other things may constitute such a senate as I desire to see. If a senate is elected for two years, as proposed by one gentleman, for four as proposed by another; the delegates go out every year; a portion of the senate remains. The delegates come in with any popular notion—and permit me to say they are notions which the people themselves will correct if they have the time—but the senators who remain over are not subject so much to the popular pressure; they know and hear and may to some extent share the opinions of the people but they are not so directly affected by them, and may in that way stand as a barrier against hasty and imprudent legislation.

I wish to add that there is something more to be regarded in the arrangement of senators than how many there are to be; and I trust in the solution of this question members will take this into consideration. Other points are coming up here in reference to the constitution of the senate in which my remarks will be more applicable than they are now; and I conclude with the remark I made that I have a difficulty at this stage of the proceeding in voting as to the length of the term of the senators. But knowing that can be revised when the report comes up on its second reading if other features have been so changed as to change the term as now proposed, I have concluded to vote for the motion of the gentleman from Tyler. But I ask again that members will look into this subject and remember that it is highly important for our own safety as the people who are to be governed by it that it should have somewhat of a different constitution from that of the house of delegates or that otherwise there is no use of more than one house.

MR. BROWN of Kanawha. I desire to know what the motion is.

THE PRESIDENT. It is the motion of the member from Preston (Mr. Dille) to amend the motion of the member from Tyler so as to fill the blank with "three".

The question was taken and the amendment rejected.

And the question recurring on the motion of Mr. Soper to fill the blank with two years, it was agreed to.

MR. STEVENSON of Wood moved to adjourn, but withdrew.

MR. VAN WINKLE. That being disposed of and the hour of adjournment having arrived I would ask before adjourning to submit the report of the Committee on County Organization. It is not necessary that it should be read tonight, sir, and would move that it be laid on the table and be printed.

There being no objection, the report was received, laid on the table and ordered to be printed. The report is as follows:

The Committee on County Organization respectfully submit the following provisions and recommend their adoption as part of the Constitution.
By order of the committee.

P. G. VAN WINKLE, Chairman.

1. Every county shall be divided into townships having an area of not less than thirty square miles, lying compactly, and containing not less than four hundred white inhabitants. Each township shall be designated "the Township of in the county of ," by which name they may sue and be sued

2. The voters of each township, assembled in stated or special township meeting, shall transact all such business relating exclusively to their township as herein, or may be by law, required or authorized. They shall annually on the first Thursday of April for every six hundred white inhabitants, elect one supervisor, one clerk of the township, one surveyor of roads for each precinct in their township, one overseer of the poor, and such other township officers as may be directed by law. They shall also biennially elect one justice of the peace; and if the white population of their township exceeds one thousand in number, an additional justice, and as many constables as justices; but the same person shall not be elected constable for more than two consecutive full terms. The supervisor, or in his absence a voter chosen by those present, shall preside at all township meetings and elections, and the clerk shall act as clerk thereof.

3. The supervisors chosen in the townships of each county shall constitute a board, to be known as "the supervisors of the county of ," by which name they may sue and be sued and make and use a common seal, and enact ordinances and by-laws. They shall transact the business of their county in legislative form, for which purpose they shall meet statedly at least four times in each year at the court house of their county, and may hold special and adjourned meetings. At their first meeting after the annual township election, and whenever a vacancy may occur they shall elect one of their number president of the board, and appoint a clerk of the county whose compensation they shall fix by ordinance and pay from the county treasury, who shall keep a journal of their proceedings and transact such other business pertaining to his office as may be by them or by law required.

4. The board of supervisors of each county, a majority of whom shall be a quorum, under such general regulations as may be prescribed by law, have the superintendence and administration of the internal affairs and fiscal concerns of their county, including the establishment and regulation of roads, public buildings, ferries and wills, the granting of ordinary and other licenses, and the laying, collecting and disbursement of the county levies; but all writs of *ad quad damnum* shall issue from the circuit courts. They shall from time to time appoint the places for holding elections in the several townships of their county, and shall be the judges of election, qualification and return of their own members and of all county and township officers.

5. The voters of every county shall on the day appointed for electing members of the legislature, whenever it may be neces-

sary, elect one sheriff, one prosecuting attorney, one surveyor of lands, one recorder of deeds and wills, one or more assessors, one superintendent of schools, and such other county officers as the legislature may from time to time direct or authorize, the duties of all of whom shall be prescribed and defined by general laws. All the said county officers shall hold their offices for two years from the first day of October next succeeding their election, except the sheriff, whose term of office shall be three years. The same person shall not be elected sheriff for two consecutive full terms, nor shall the deputy of any sheriff be elected his successor; but the retiring sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall continue in force. The duties of all the said offices shall be discharged by the incumbents thereof in person or under their personal superintendence.

6. The legislature shall, at their first session, by general laws, provide for carrying into effect, the foregoing provisions of this article. They shall also provide for commissioning such of the officers therein mentioned, as they may deem proper, and may require any class of them to give bond with security for the faithful discharge of the duties of their respective offices, and for accounting for and paying over as required by law, all money which may come to their hands by virtue thereof. They shall further provide for the compensation of the said officers by fees, or from the county treasury; for their removal, in case of misconduct or neglect of duty; for filling vacancies, not herein provided for, and for the appointment, when necessary, of deputies and assistants, whose duties and responsibilities shall be prescribed and defined by general laws. When the compensation of an officer is paid from the county treasury, the amount shall be fixed by the board of supervisors, within limits to be ascertained by law; but no reduction of the compensation of any officer shall take effect during the term for which he was elected.

7. The civil jurisdiction of a justice of the peace shall embrace all actions of assumpsit, debt, detinue, trespass and trover, where the defendant resides, or, being a new resident of the State, is found, within his township, or where the cause of action arose therein, and when the value in controversy, exclusive of interest, does not exceed fifty dollars, subject to an appeal to the circuit court of the county, but a justice of any other township of the same county, may issue a summons to the defendant to appear before the justice of the proper township, which may be served by a constable of either township. Executions issued by a justice may be directed to, and executed by the constable of the township where the judgment is rendered, or in which the property to be levied on is found. In case of a vacancy in the office of justice or constable in any township having but one, or of the disability to act of the incumbent, any other justice or constable of the same

county may discharge any of the duties of their respective offices within said township.

8. Every justice of the peace and constable shall be a conservator of the peace throughout his county, and the criminal jurisdiction of the former shall be co-extensive therewith. Criminal and peace warrants may be served by any constable thereof, under such regulations as may be prescribed by law. Every justice shall perform the duties of the former office of coroner within his township, in cases of death by violence or casualty, and may, if required, act as such in any part of his county. The boards of supervisors shall designate one or more constables of their respective counties to serve process and levy executions when the sheriff thereof is a party defendant in a suit therein, and to perform the other duties of the said former office.

9. No county hereafter erected shall have an area of less than four hundred and fifty square miles, and no county shall be reduced to less than the same area, or its white population to a number less than four thousand, by taking territory therefrom to form a new county. The board of supervisors may alter the bounds of a township of their county, or erect new townships therein, with the consent of a majority of the votes of each township interested, assembled in stated township meeting, or in a meeting duly called for the purpose; but the area of no township shall be thereby reduced below the limit mentioned in the first section of this article, unless the number of the white population remaining therein shall exceed one thousand.

MR. STEVENSON of Wood moved to adjourn.

MR. LAMB. If the Convention adjourns, I suppose it is to ten o'clock. The motion for eleven only applied to today.

And thereupon the Convention adjourned.

XX. THURSDAY, DECEMBER 19, 1861.

The Convention was opened with prayer by Rev. J. M. Powell, member from Harrison.

The minutes of the preceding day were read and adopted.

MR. VAN WINKLE. Mr. President: I submitted last evening the report of the Committee on County Organization, which has just been read in the minutes, and was indebted to the courtesy of a gentleman who moved to adjourn for an opportunity to offer it at that time, and was anxious to do so that it might be printed and in the hands of members before they go to their several homes.

I had, however, been requested by members of the committee to say a few words on presenting the report. It would not have been courteous to do so last evening, because it would have delayed the motion for adjournment which had been withdrawn, and I would ask the liberty of the Convention to say them now. They shall be very few.

The reason why these gentlemen deemed it necessary that anything should be said at this time—although it is not unusual for the chairman of a committee to make an explanation of a report—was because to many the system which they propose to inaugurate for the different counties is novel. They may have heard and knew, of course, that similar systems are in vogue elsewhere, but many have had no practical experience of it; and it is rather to ask members, as it were, to suspend their opinions until they have heard what is to be said in its favor than for any other purpose that these remarks are deemed necessary.

I suppose it is generally understood in this Convention that the county courts are damned and have been for twenty or thirty years. I apprehend there is a very general feeling in that part of the State which will constitute the new State against the existence of those institutions. There are many objections against them as judicial bodies but I think there are far more as administrative bodies or as bodies which attempt to administer the county affairs; because it seems, in the first place an anomaly and is really forbidden by our bill of rights to mix up or interpose in a judicial body the functions of a legislature. And such is the county court. It is a judicial body; and when they are administering the affairs of the county it is acting as a legislature. Even since we have elected justices, while their functions as justices were deemed by many as important, yet they had to vote for the same men to do these two different acts and consequently no fair test of the wishes of the people in reference to the election of these men could be had. Some would favor him on account of the administration of county matters and some on account of judicial functions. The difficulties arising out of this are partly in the mode of administration; but partly in the way the county court are elected. The citizens might well prefer one man for the judicial part and another for the administrative part, and yet he is compelled to take the same man who administers both. However, sir, it is not the time now, nor did I intend to say what these difficulties were. Suffice it to say that I consider and I presume the Convention considers—because I understand that the committee who more particularly have that matter in charge will report against county courts—and I think that is some indication of the opinions of the Convention—that county courts are to cease; and the question comes up what is to be substituted for them and almost certainly whatever is submitted must be to some extent a novelty.

The plan here proposed by the committee divides the counties into townships, giving each a representative, and will confide to them a great deal of business which no other township is interested in, the whole body together administering the business pertaining to the whole county. So that the counties will have legislatures of their own. That I presume is not too big a word. We call them a board of supervisors. They meet as a board, and when sitting as a board, every matter that comes before them is open to discussion. They do not do this in the county court but have lawyers to come before them and argue; but instead of that the members of this board will discuss questions themselves. Their constituents will make known to them their wishes before they go into the board; and in that way something more just and reasonable with reference to the county matters will be arrived at. The change unquestionably is a great one, but we are not instituting it—trying a new experiment. It is not an untried matter; and I will conclude these few remarks, if the Convention will pardon me, by reading a word or two from Mr. Jefferson. Mr. Jefferson died in 1826; and these letters from which are taken the extracts which I have before me were written at the time when they began to agitate for a new constitution for Virginia. The first does not refer directly to this mode of organizing counties but there is a good deal of wisdom in it. I apprehend every one, no matter what may have been his political associations or general convictions as to the politics of the day when Jefferson was in the ascendency, all will concede to him a mind of a very practical and enlarged character. And secondly, that the very faults that are charged against him are that he favored too much popular government. That was the question between his party and the Federalists. While the one wanted a strong central government, as was alleged, the other wanted to confide all the power to the people. In that latter part I am with Jefferson. I believe he was a remarkably single minded man; that his motives were good, however men may have looked on his doctrines.

Mr. Van Winkle proceeded to read:

"Some men look upon constitutions with sanctimonious reverence and deem them like the ark of the covenant too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human and suppose what they did to be beyond amendment. I knew that age well; I belonged to it and labored with it. It deserved well of its country. It was very like the present but without the experience of the present; and forty years experience in government is worth a century of book reading; and this they would say themselves were they to rise from the dead." (From Jefferson's letter to Mr. Kercheval.)

I do not wish to detain the Convention by reading the whole extracts but that which is the main sentiment.

Now in reference to the effect of these townships on the preservation of the public liberty and upon giving men their rights as citizens of the country. In these letters Mr. Jefferson proposed to divide the counties as we propose, but he called the divisions "wards," and what we call "supervisors" he called "wardens". But the committee having considered that the name ward is applied to the subdivisions of cities chose the name of townships. He says:

"These wards, called townships in New England are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation. We should thus marshal our government into:

"1—the general Federal republic, for all concerns foreign and Federal;

"2—that of the State, for what relates to our own citizens exclusively;

"3—the county republics, for the duties and concerns of the counties;

"4—the ward republics, for the small and yet numerous and interesting concerns of the neighborhood.

"And in government, as well as in every other business in life, it is by division and subdivision of duties alone that all matters great and small can be managed to perfection. And the whole is consummated by giving to every citizen, personally, a part in the administration of public affairs." (Ibid.)

Now, sir, reversing this very much, and what he distinctly intimates is this: to the townships is given the administration of all affairs which concern no other township and which are in their nature capable of being managed in the township; to the counties all that pertain to the county exclusively and which the county also is capable of managing; to the State all that belongs exclusively to the State; and lastly, to the general government those matters in which all the states are interested. Here, then, is the great principle of a representative republic founded on democracy. If the people could retain in their hands the actual administration of their affairs, that would be a pure democracy; but as this is impossible, their convenience and the necessity of the case demands that they should be confided to representatives. Now it is evident that I will confide to an agent no more than is necessary. What I can do more conveniently, I will do myself and only give to the agent the power to do what I cannot do so well myself.

There is another extract from a letter written to another person about the same time, in which Mr. Jefferson, after repeating the advice to divide the counties in this way, he used almost the same expression:

> "Each ward would thus be a small republic within itself, and every man in the State would thus become an acting member of the common government, transacting in person a great portion of its rights and duties, subordinate, indeed, yet important, and entirely within his competence. The wit of man cannot devise a more solid basis for a free durable and well administered republic." (Letter from Mr. Jefferson to Maj. Cartwright in reference to a proposed call for a convention to amend the constitution of Virginia.)

After all, then, this is no new idea, although it may be a new principle in Virginia. Jefferson had died before the convention of 1830 met. When it did meet, Judge Lewis Summers, of Kanawha county, the brother of the present Judge Summers, a good deal his senior in years, then an active man in public life—and I may say from an intimate personal acquaintance with him as pure a man as I ever knew and one who was certainly solicitous for the prosperity of this western country and who did as much as any other man to promote it, and who certainly had occasion to know what was the operation of county courts—he in the convention of 1830 introduced a plan precisely or very nearly that of Jefferson. He offered these resolutions:

> "RESOLVED, That each county ought to be divided into wards, so that there shall be not less than three nor more than seven in any one county; and that there ought to be elected in each ward by the voters qualified to vote for members of the house of delegates one commissioner; and that the commissioners elected in the several wards ought to form a board of police for their respective counties.

"RESOLVED, That the boards of police ought to be charged with the superintendence and direction of the fiscal concerns of their respective counties, with power to assess, levy and cause to be collected all local, county or ward taxes, and to direct the disbursement of the same; to superintend all provisions and expenditures for the support of the poor; and the opening, preserving and improving of the public roads and other highways, with the erection of bridges and other public structures, ought to be confided to the boards of police."

The Convention will find that we have in part adopted Judge Summers' language and have more or less adopted his plan and Jefferson's. And again I remark that this thing is no novelty as an idea although it has not yet been tried. What I ask is that every member will examine this plan closely, and without prejudice if he can, and see whether we have it in the details all right or not. That may be questionable; but it is in reference to the principal thing, the division of our counties into these subdivisions that I wish to call the attention of the Convention.

I have, sir, while I am up, a proposition to offer, to be laid on the table and printed. I had some doubts about what committee it should go to, but as the benefit will go to the school fund, I have thought of referring it to the Committee on Education. It is intended to meet that great difficulty which exists in this section of the State of our land titles. It proposes, I think, a remedy that was in operation from 1838 to 1844 or 1848, and which did a great deal of good in that time. It is a similar proposition to one that was drawn up by Henry A. Wise, Benjamin H. Smith and some others of the best lawyers that were in the convention of 1850. It is elaborated a little more, and contains a good deal more than the committee expect to be adopted; but we present it in this shape in order that the whole subject may be before the Convention for consideration.

MR. BATTELLE. I would ask, if the Convention please, that it be read for information now before printing.

By direction of the Chair, the Clerk read the document as follows:

The right to enter upon or to bring actions for the recovery of lands lying within this State, shall, for the term of twenty-one years next after this Constitution goes into operation, be limited to seven years next after the time when such right accrues or shall accrue; saving to persons of unsound mind or under the age of twenty-one years, the right to make such entry or bring such actions within one year after the removal of their respective disabilities, and not afterwards, notwithstanding the said seven years shall have expired; but no such action instituted previously to the time this Constitution goes into operation shall be affected by any of the provisions of this section. After the expiration of the said term of twenty-one years the limitation of such entries and actions shall be prescribed by law.

All lands lying within this State which have not been entered for taxation, or upon which taxes have not been paid to the State of Virginia or this State for more than five years, shall be deemed and declared forfeited and forever irredeemable, and such forfeiture shall not be released. No grant or patent for forfeited, waste or unappropriated lands, shall issue after this Constitution goes into operation, except upon surveys made according to law and duly returned to the land office previously thereto; but all such lands shall be publicly sold under decrees rendered by the circuit court for the county in which the same, or the greater part thereof, may lie, upon proceedings in the nature of proceedings *in rem* therein instituted, in such manner as shall be prescribed by law.

The money received for lands sold under the preceding section, after deducting the costs and expenses of the proceedings and sale, shall be deposited in the treasury of the State. When forfeited lands are so sold, the excess of the proceeds thereof deposited in the treasury as aforesaid, over the taxes and damages charged and chargeable thereto under the laws of the State of Virginia and of this State shall be paid to the respective former owners thereof, who shall prove themselves entitled to such excess before the circuit court which decreed the sale of the same, by proceedings instituted in such court within five years next after such sale, in such manner as shall be prescribed by law. Appeals from the decisions of the circuit courts in such cases to the court of appeals shall be allowed if applied for within one year next after the decree of sale by or for any person claiming an interest in the land sold as owner of any part thereof; but the proceedings of the circuit courts leading to the sale of such lands shall not be otherwise re-examined or drawn in question in any court of the State unless fraud or collusion or the actual payment of all taxes and damages, charged and chargeable to the land sold, previously to the institution of the proceedings against the same, be alleged and proved by the claimant, and then only in the court where such proceedings were had.

All money being the proceeds of forfeited waste and unappropriated lands deposited in the treasury and not reclaimed by the former owner as aforesaid, shall be carried to the credit of a separate fund to be called the school fund; and invested in the bonds or other securities of the United States or this State; and the annual increase thereof shall under such regulations as may be prescribed by law be sacredly devoted and applied to the support of primary education in common schools throughout the State, and to no other purpose whatever.

MR. VAN WINKLE. I would just add that the system, being the system of 1830, has been through the court of appeals several times, and the result is that where sales were properly conducted, unless of lands proved to come within the exceptions of the act, they have been sustained by the court and that those who purchased under those sales are now holding as good titles as there are in the State. In my own county, flourishing farms are on lands which as commissioner I sold for sixty or seventy cents an acre—lands which would bring any day ten dollars an acre.

MR. HALL of Marion. I desire to offer a resolution this morning in offering which I trust it will not be thought that I am influenced by any feeling of disappointment or defeat, but as a matter to prevent any misunderstanding and as one of sheer justice and propriety. I ask that it be read and acted on this morning.

The Secretary read the paper as follows:

WHEREAS, This Convention have adopted a resolution that when it adjourns on the twentieth instant, it will do so to meet again on the seventh of January, 1862, therefore

RESOLVED, That the members and officers of the Convention shall not receive any *per diem* or other compensation for any part of the time of such recess.

MR. STUART of Doddridge. Let me say, sir, that it was the distinct understanding that we were not to receive anything when we passed the resolution.

MR. LAMB. I believe that matter was fully understood when the Convention resolved to take a recess, but there is no objection at all to putting it on the record.

MR. HALL of Marion. I think it is necessary to put it on the record. Because I know there is a difference of opinion about it. In looking to the matter absolute, I think they might; and I think it important to make it absolute.

MR. VAN WINKLE. I stated when the resolution providing for adjournment was under consideration, that we would not have any pay during that time. I was not aware that the legislature were in the habit of paying themselves during recess. And I think economy, like charity, should begin at home. Be that as it may, sir, this, however, from the time that is taken ought not to be considered a recess precisely, if we adjourn here one, two or three days that might be considered a recess during which we would receive our pay; but I apprehend the principle of the resolution offered by the gentleman from Marion is correct in making it as it were an adjournment, and holding as it were an adjourned session and that during the interval we should not be paid.

THE PRESIDENT. I would suggest that if the resolution is unanimously adopted it be so stated in the journal.

The question was then taken and the resolution unanimously adopted.

MR. LAMB. Mr. President, when the Convention adjourned yesterday evening, it had under consideration the report of the Legislative Committee. I wish members to turn to the eleventh page. The population of the proposed seventh senatorial district should be 34,478, instead of 33,478, as printed. There is an error of figures on the next page, too, in the sum which is given as the aggregate column of fractions. That is a matter of no practical importance, however, the sum should be 138,983. If gentlemen will make those corrections in the printed report, I think I can assure them that all the balance of the figures are right.

As the Convention has passed by so much of this report as relates to the apportionment and numbers of the senate and house of delegates the next section in order will be the ninth. It is the section in regard to new counties.

MR. STUART of Doddridge. I would suggest that the question was on the second section when we adjourned. All the reports—including the minority—are now in and why not take up that section.

MR. LAMB. I understand in regard to the matter of apportionment, the Convention prefer taking the report with them in order to examine it deliberately and act upon it when the recess is over, and I understand they made an order to that effect, to pass by so much of this report as relates to the number and apportionment of the senate and house of delegates and go on with the balance of it.

A motion by Mr. Lamb to pass by so much of the report as relates to the numbers and apportionment for the two houses of the legislature and take up the other part of the report was put and agreed to.

MR. POMEROY. The understanding I had, Mr. President, was that when we adjourned we were still considering the second section of this report; and the first clause of this second section has never been acted on; nor neither has the last clause. The first clause is that "the senate shall be composed of eighteen and the house of delegates of forty-six members." That clause has never been acted on if I recollect right.

THE PRESIDENT. The Chair would remark that he is satisfied the remark of the gentleman from Hancock is correct. The first clause was passed by on account of the absence of Mr. Brown.

MR. POMEROY. If it is in order, I would move that this first clause of this second section be taken up. I understand there is a gentleman who wishes to offer an amendment to that first clause, and I cannot conceive a better time to consider it than now.

MR. LAMB. Mr. President, I think I was correct in my understanding of what had been the orders of the Convention. Those orders, of course, should be rescinded whenever the Convention please. There was an understanding that so much as related to the fixing of the numbers and the apportionment of the senate and house of delegates, should not be taken up at present. That was my understanding most distinctly. I think it evident that the Convention is not ready to act on this subject. Members will want time to prepare amendments in regard to these matters. The clause which the gentleman wants taken up and acted on involves the whole question, and we cannot decide on that without considering the whole matter of apportionment. You must fix on your plan of apportionment and see how it will work out before you can intelligently say what shall be the number of the house or senate.

I would move as an amendment that so much of the report as relates to the apportionment of the senate and house of delegates, and the numbers of the two houses, be laid on the table for the present, with the understanding that it will continue there until we return.

MR. VAN WINKLE. Mr. President, I concur with the remarks of the gentleman from Ohio. I wish myself to offer to increase the number of the house of delegates. It is evidently too small, and I wish to show reasons why. But would it be treating this Convention right for me to get up and move to increase the number of the house of delegates and not accompany it with an apportionment to show how it would work. It is almost impossible to make amendments in this unless you amend the whole.

One gentleman may think his county is not treated well and may move to alter that, and you will throw the whole into confusion. Gentlemen will find we will have to adopt a principle in reference to this apportionment and then we will have to abide by it. But as I said, I think I can show that this number is so small as to make a divisor which does not adapt itself to the counties. You take a divisor that is greater than the population of one-half of the counties and you will necessarily have a large fraction over and the representation must be unequal.

Whenever this comes up, I mean to make another move to amend that the representation in the house of delegates be equally divided among the senatorial districts, and for this purpose you construct your senatorial districts on the basis of the white population, giving to each a very nearly equal number, as is done in the report of the committee. Members will see that the fractions are small and that it makes a very equitable apportionment. Now, sir, these districts—as has been stated in reference to both the minority and majority reports—are constructed according to the principles I indicated in some remarks yesterday, that each district may, to a great extent be supposed to have an identity of interest. Now, if you divide the numbers equally between the senatorial districts, you reach the question of population certainly as to the districts. Then if you take the number of delegates assigned to a district and divide it as equally as possible among the population of the district, you get very much nearer to an equitable districting. Now, sir, as this report stands it condemns itself. Here are nine senatorial districts and forty-six delegates; one, of course, has one more than any other. The unfairness of this is manifest by merely stating the question. If an opportunity is afforded—and I would move to amend the motion of the gentleman by passing this subject over until after the recess—then we may have an apportionment that will do justice to the whole. We must fix a just principle and then carry it out strictly; and I hope we shall adopt such a principle confining the legislative body making the apportionment to some principle and not permit an iniquitous "gerrymander".

I therefore move to pass by everything that relates to the apportionment in the two houses of the legislature until after the recess.

MR. BROWN of Kanawha. We are under no obligation to take the census of the United States as the basis of our action; and if we know that is manifestly wrong, it would be very unwise to adopt it. What shall we adopt? I say the truth. The certificate of the officer of the Census Bureau is no more than any other certificate of any other individual. He only certifies what these deputy marshals report. He no doubt certified what he believed correct. I do not know as to that. But the fact is, I will say, the error exists in the county and in apportioning the population. That error should be corrected by us and not be carried into our report. We show a rule by which the truth is arrived at. It answers every demand.

MR. VAN WINKLE. I would like to call the attention of the Convention to one fact. In these double districts in the minority report, leaving out Pendleton, etc., there is a difference of nearly 8000 between the lowest number of inhabitants in one district and the greatest number in another. There is an advantage of 8000 given to one district over another. In the report of the majority, the difference between the highest and lowest does not exceed 2500. Now, there are considerations of that kind by which we ought to be governed and which we ought to have an opportunity to examine; and I therefore trust the amendment as amended will prevail.

I deem it still important to call the attention of the Convention to errors which strike my mind with greater force than that suggested by the gentleman from Wood. In the report of the majority it will be found that the first district falls short, and the second district falls short, and, I believe the third does; that there is a succession of falling short all in one end of the State and a succession of excesses all in the other end which makes a very manifest error in the balance of the powers of the two. If your errors were equally compensated on one side and the other, then a little variation would not be so important.

MR. SINSEL. I would like to direct the attention of the Convention to one thing in the first minority report. I see here he connects the counties of Monongalia and Taylor together with a population of over 20,000, and gives them one representative, while the county of Kanawha, with a population of but a little over 13,000, has one, making a difference of some 7,000 in the single senatorial district. Now, the committee treat this by separate districts. Myself, I prefer separate ones if we could get them on anything like equality. Here is the city of Wheeling with one representative with a population of some 20,000, and here are

Harrison and Kanawha with about 18,000, each having one. Now if you will compare the fractions in the arrangement made by the majority of the committee, you will find in the districts it is very small and I think we have arranged it remarkably well.

MR. LAMB. The motion, I believe, before the house is to lay so much of this report on the table as relates to the apportionment and the numbers of which the senate and house of delegates are to consist. The motion is to pass it by. If on a question of this kind we are to go into an investigation of the comparative merits of the two reports, we might as well take the question fair and square. I do not think the discussion on this subject is in order at present and am not disposed to engage in it myself. I shall, of course, have an opportunity to vindicate whatever is in this report at the proper time, and I am willing to put it off until then. I think it must be very evident that the best course we can take at present is to lay that matter over to give us all an opportunity to examine these calculations and to make up our minds. Try our hands. I hope members will do that—those who are disposed to object to the report should try their hands at carrying a better apportionment through. I know what sort of a job it is, and how easy it is to object to a detail here and there; when if you correct that very error and carry it through your apportionment you will find it necessarily leads to much greater objections in other parts of the same operation.

I hope the Convention will consent to let the report lie over so far as it relates to those two points for the present.

MR. STEVENSON of Wood. It seems to me, sir, very evident that the Convention is not prepared to act either speedily or intelligently on this part of the report; and I hope, sir, for one, it will be deferred until we meet after the recess.

MR. STUART of Doddridge. In addition to what the chairman of the committee said, I desire every member of this body, before they find fault with the majority report, to carry out in detail any alteration you make before you take exceptions to it.

MR. POMEROY. As I made this motion to take up, I very willingly and cheerfully withdraw it, as the members on the committee do not seem to be agreed themselves, and it will perhaps bring something more intelligible before us when we reassemble. I have my own opinion about the difficulties that will arise afterwards;

but we will have more time to meet them, I will withdraw my motion to take up.

MR. LAMB. The gentleman from Hancock made a motion. I moved to amend. He consents to withdraw his motion, and mine is the only one before the house as an original motion, not as an amendment, for the original motion is withdrawn.

MR. VAN WINKLE. Do you accept my amendment to defer until after the recess.

MR. LAMB. Yes, sir, I accept that amendment to defer so much consideration of this report as relates to the numbers of the two branches until after the recess. If we are to adjourn Friday—and this is Thursday—we certainly can not go through this matter if we were to go to work instanter and work until the recess will be upon us.

Mr. Lamb's motion to lay on the table so much of the report as relates to the numbers and apportionment of the two branches of the legislature was then agreed to.

MR. LAMB. I presume this brings us to the consideration of the ninth section in regard to new counties. The Committee on County Organization have reported a provision on this subject, and they prefer, I understand, that the action of the Convention upon it should be delayed until their report comes up for consideration. Their report is not yet printed or in the hands of the members. I move, therefore, to pass that by and proceed to the next.

MR. DILLE. I propose to make an amendment to that, as I see we are liable to meet with difficulties all the way through, and there is a report in the hands of the members of the Convention that we can take up and act upon. I would move to amend the motion by passing by the whole and taking up the report of the executive committee. It strikes me as better calculated to expedite business.

MR. LAMB. I do not see that there would be any difficulty after we get that far in this report in taking up the report *seriatim* and decide the matter all the way through. We will have got over the sticking point, and I think we could just take up the balance of this report and act upon it straight through. It would expedite business when we are at a thing to go through with it as far as we can. This continual changing from one matter to another without finishing any of them necessarily must confuse the daily business. But I am perfectly willing to assent to the other course if the members prefer it.

MR. HERVEY. As this report has been in the hands of the Convention for a day or two, and as this latter part of it does not seem to conflict with the other part of the report, it seems to me it would be well enough just to take it up and go along with it. If we take up another report about which the members know nothing they will have difficulty about coming to conclusions just now. I hope we will proceed with this report.

The Chair stated the question to be on motion of Mr. Dille to pass by the whole report for the present and take up the report of the executive committee, and on the question thus stated the motion was not agreed to.

MR. LAMB. The question recurs upon my motion to pass by the ninth section until the report of the Committee on County Organization shall come up.

And the question being put, this motion was agreed to.

MR. SOPER. If it be in order, sir, I propose an amendment to the second section as follows:

Insert after the word "years," in the eighth line, the words, "and after the first election, the senators of each district shall be divided by lot into two classes; the first class shall hold office for one year, and in the second class for two years, so that one-half thereof shall be chosen annually thereafter."

THE CHAIR. The Chair would inform the gentleman that the Convention has just passed by that portion of the report.

MR. SOPER. I was not aware of that, sir.

MR. LAMB. I would suggest that the proposition of the gentleman from Tyler be laid on the table and printed. It will, of course, come up and must be considered and disposed of when these other questions come up.

THE CHAIR (addressing Mr. Soper). Let the amendment go to the press and come up in its proper time.

MR. SOPER. Very well, sir.

MR. BROWN of Kanawha. If in order, I will move the adoption of the tenth section.

The tenth section was reported as follows:

10. Additional territory may be admitted into and become part of this State, with the consent of the legislature thereof. And in such case, the legislature shall provide by law for the representation of the white inhabitants thereof in the senate and house of delegates, in conformity with the principles set forth in this Constitution. And the number of members of which each branch of the legislature is to consist, shall thereafter be increased by the representation assigned to such additional territory.

MR. LAMB. The Convention of course will understand the object of this. It is to put such a provision in the Constitution as may enable us to provide for the counties which are to be conditionally admitted into the State. If the condition is complied with they come in; and this provides for representation, etc., on the same principles, whatever they may be, that the Convention may determine on.

MR. HALL of Marion. I wish to ask whether this section has reference to those counties that are to come in on conditions, or whether it refers to other portions of adjacent and surrounding territory. If it has reference to these to come in on conditions, we need nothing—or at least we do not need so much as is provided in this section; that if it is proposed to take in additional territory, regarding our line as fixed, exclusive of the counties that are to come in on condition, by that very position we place ourselves under the necessity of having not only the consent of the legislature of West Virginia but the consent of Virginia and of Congress afterwards. If we recognize the fact that we have the State of West Virginia bounded by the county lines excluding these additional counties, we then admit a right to exist on a people from which we will never receive any favors as long as we live. I object to that feature of it; and I maintain that our limits include all these additional counties. They are only out on condition that they vote against coming in. I think there is a necessity for regarding them as in, and I think we have a perfect right now to so regard them; and to regard it any other way will place us under the necessity of asking consent of a legislature under the jurisdiction of Letcher & Co.

MR. LAMB. I do not recognize that as a legislature at all.

MR. HALL of Marion. Neither do I. But they may set up a pretense of legislative authority over all. I have no doubt they will and that they do. So that whilst I have not prepared any amendment of my own to it so a man would understand what was contemplated, I think the section ought to be modified in that respect, unless it is construed; and if it is to be so construed, it ought to be definitely stated. There would be no particular necessity for saying: and also the consent of the State in which the additional territory may be included, because that will arise as a matter of course outside and independent of our constitutional provision. But I am opposed to the tenth section if we are to recognize these additional counties as being outside of our line. I maintain they are included.

MR. IRVINE. Mr. President, I am opposed to the tenth section as it exists at present. If it is intended to apply to the seven counties that we have included conditionally, I am then in favor of using some words that would restrict the application of the tenth section to the seven counties. There is nothing here to restrict it to that seven counties that we have included conditionally. If we intend to give the legislature power to include other counties, then let it be so expressed; we remove all ambiguity; and then if the legislature is to include other counties, it must be with the consent of the State of Virginia and with the consent of the counties, and with the consent of Congress. I am not disposed to confer upon the legislature the power to include absolutely any additional counties. There is nothing in this tenth section to limit it to the seven counties that we have included conditionally. I wish this tenth section to be so framed as to show exactly what is intended, so that members will know exactly what they are doing, when they vote on this subject.

MR. BROWN of Kanawha. I confess I understand this differently from the gentlemen who have spoken. I understand this Convention has determined for itself what shall and what shall not be part of the State; and that far as the counties of Hampshire, Hardy, Pendleton, Berkeley and those counties the other side of the Alleghany are concerned, there is no question for the legislature. I understand this Convention, in the resolution already adopted, has prescribed a fixed boundary; that if there is any State that boundary will be named; and then that they have prescribed a certain other boundary which may be an additional boundary of the State as the people may choose to determine. But if in the submission of this Constitution to these people and in the expression of their determination upon it, if they vote for it they become a part of the State beyond the power of the legislature to exclude them when it assembles under the new State as any other body in the country; that the question whether those additional counties become a part of the State or not I understand this Convention has determined shall not depend on the legislature of West Virginia when it assembles under this Constitution, but shall depend on the vote of the people of these counties; and if they vote to come in they are a part and parcel of the State. They do not come in asking to be admitted as an integral portion of another territory but they send their delegates to the legislature and elect the officers of the state government in every department; and, therefore, have nothing to do with this tenth section.

I understand this section as applying exclusively to a power which this legislature will unquestionably have, unless it is taken away by the Constitution, whether this is adopted or not. Every state has a right to adopt territory. The only question I ever knew raised was in the case of Alexandria county, which was ceded back to Virginia. The legislature undertook to give to that county and city a representation in the legislature; incorporate it into the state, without any amendment to the constitution and without any reference to the people, to admit a delegate upon the floor of the legislature for it. Well, I never doubted the propriety and power of the legislature to do it, with the consent of Congress. The legislature represented the power of Virginia. Yet the question was raised whether the legislature had such authority. Now this section clearly provides for any such case. Suppose Shenandoah should consider that her interests are connected with the people of Hampshire, Hardy and Pendleton; that they cannot get to Baltimore except through Frederick; that they want to come into this new State. The legislature of Virginia says you may go and welcome; we want nothing more to do with you. Then the question comes up would the legislature of West Virginia under this provision, have a right to admit them? Unquestionably. They would have a right to, if the State saw proper. Then instead of being under the necessity of amending the Constitution to suit the case, this would provide that the legislature should go on and extend to them the right of representation as is prescribed here in every other case. It was never proposed to admit the county to representation in the house and senate without reference back to Virginia. And that would have a great benefit. It would require no amendment to the Constitution. It seems to me this is a wise and proper mode, necessary to provide for, if the power does not exist in the provision on the subject. I believe such a power would exist without any such provision, and I give the precedent on which the State has heretofore acted. But it is certainly more satisfactory to put it down in writing now, when you are defining so there may be no controversy on the subject.

MR. VAN WINKLE. I do not think this tenth section meets the case. Seven valley counties go together in any case whatever. The legislature has nothing to say about their admission. If they ordain what we have already fixed in the Constitution, the simple fact that a majority of them are in favor of coming will include them all in the new State without any consent of the legislature; and I think it is necessary that the legislature, in giving its assent to the formation of a new State under the Constitution, assent to those seven counties, should they vote to come in, as much as to any other part of the territory included. That matter may be reached very much better by the form in which it is done by explaining it and letting in the minority report. The minority report says that "If the following counties become part of this State then—the counties of Pendleton" and so on "shall constitute another district." By inserting a provision like that following these provisions for apportionment, and if the counties should come in according to the terms adopted by the boundary committee, then these counties would come in; and I should propose, at all events, that the Convention would consider the tenth section apart from the seven valley counties. I do not think they should be affected by it, unless you maintain that this section would override the one that the Convention has deliberately adopted in reference to these counties. That would present to us the naked question whether the legislature shall have the power to admit additional territory into the State without the action of the people of the State. Certainly there is some question in that. I do not say that they might not under their joint legislation powers have sufficient power; but as we are now about to limit this power, should not we place a limitation on them? The balance of the section I do not see needs any amendment but it can be construed as governing the seven valley counties. As it has been agreed to pass by everything that relates to the apportionment of members, that would seem to pass by this so far as it relates to the seven counties; though if my view of it is taken as not applying to these seven counties, yet the Convention can vote understandingly on it and know what they are doing.

MR. LAMB. Mr. President, I had supposed that the object and purpose of the tenth section and its operation would be a very plain matter; but it seems it is not. Considering that section in connection with the others, the following state of affairs is presented: The former sections of the report propose a senate of eighteen and a house of forty-six for the forty-four counties. We have resolved that under certain conditions, seven additional counties should be admitted. It is necessary to provide in some shape that upon their being admitted they should have representation upon precisely the same principles and according to the same rules upon which representation in the two branches of the legislature is given to the forty-four counties. I intended to move that the words "the consent of the legislature," in the second line of this tenth section should be stricken out; but perhaps a better amendment in regard to the tenth section would be to strike out the first two lines and the words "and in such case" in the next line, and make the section read:

"10. If additional territory be admitted into and become part of this State, the legislature shall provide for the representation of the white inhabitants there in the senate and house of delegates in conformity with the principles set forth in this Constitution."

We have adopted a fixed boundary including forty-four counties. There are seven other counties which do not as yet constitute a part of the State. They are not included within the State at present. We intended to provide in the report that is before you for the representation of the forty-four counties, the number of which each house should consist; but so far as refers to these counties in the valley, if those additional counties should come in, representation should be given to them, upon the same principles and the same rules; and for that purpose the number of each branch might be increased.

But to state the matter fully. There is no doubt that the section was intended to include a case such as that presented to the Convention by the gentleman from Kanawha; to put it in the Constitution, so that the difficulties that did arise in regard to the re-annexation of Alexandria, etc., should not arise in the future. So that the Constitution would appear upon its face to make provision for such an emergency; but it strikes me there ought to be in our Constitution some provision for an emergency of the kind. Constitutions are intended for perpetuity—intended to provide not merely for the past or the events of the day; and if we expect our Constitution to be permanent we must have in it provisions adequate to any emergencies that may reasonably, at least, be expected to occur hereafter. No doubt that under this provision if it became in future desirable to admit an additional county or part of a county, in order to gain a defensible position or for anything else; then the legislative power would have power to admit them; and I submit to the Convention whether they ought not to have such authority. Nor does the provision attempt to go further or to prescribe that their consent may be necessary. We may leave that matter as we find it. If, in fact, the consent of Congress may be necessary in such a case, we cannot dispense with it. But we do not pretend to. If the consent of another legislature may be necessary we cannot and do not pretend to. We must leave that matter as we find it. We should provide, however, that if the consent necessary—that of Virginia be obtained and the emergency does occur in the future, the legislature may have the power to act wisely and prudently in such an emergency. The provision which is here reported therefore applies directly I think to the seven counties, and it also would include a case if it should occur such as was referred to by the gentleman from Kanawha. But I think it would be still an improvement on the section and perhaps relieved of some of the difficulties in regard to it if the amendment which I have indicated should be adopted. It is certainly not intended by this Convention that the consent of the legislature of the new State should be necessary to the admission of these seven counties; and if the amendment which I suggest is adopted all impropriety in the language in that respect would be done away with. Should the section read "If additional territory should be admitted into and become part of this State, the legislature shall provide for the representation, etc." I move that amendment to the section: strike out lines 98 and 99 and in line 100 the words "and in such case," and insert "If additional territory be admitted into and become part of this State."

MR. BROWN of Kanawha. I find myself compelled to oppose the amendment of the gentleman. The section is complete in itself, perfect in every part, wanting nothing. The amendment proposed only destroys its harmony and will attempt to make it applicable to two things that are totally inconsistent in themselves. Under the action of this Convention—unless it is the purpose to change that action for secondary considerations—after much discussion we have determined upon a certain boundary for the State, in a certain event and including the counties east of the Alleghanies. Now you certainly can never insert into the Constitution at the same time authorizing and permitting the legislature to determine the question whether they shall come in or not. We have determined that they shall be a part of the State if they vote to come into it. We are going to submit this Constitution to them to vote on just as to the rest of the people.

And here it should be borne in mind that we have no new State. The very vote that determines whether these portions will be a part determines whether there will be any new State or not. It is the absolutely essential step. If the Constitution is ratified by the people of the forty-four counties and by these seven counties, then there is a new State so far as they are concerned; the boundaries are fixed and determined; and no legislative action can change them, because these people will be as much a part of the State—will have their representatives in the legislature that will determine this very question. And the only question then will be whether the legislature will have power to exclude from the boundaries those people whom we have permitted to determine by their own act that they would be a part of the State. So that you cannot make any amendment to authorize the legislature to determine the question, or to make the fate of those people contingent on the votes that have adopted this Constitution. Their adoption of it makes them part of the State and this Convention must provide for representation as it provides for every other district; and that provision must be conditional, as proposed in the minority report, that if they come in then their representation shall be so and so, fixed and definite. If they stay out by their vote then the Constitution requires no later action; it will be complete in itself. The same thing will be in the judiciary. The same difficulties arise, and some provision will have to be made by the committee on that subject, providing that if those counties come in then there will be so many judicial districts, etc.

Now it may be urged that we ought then to fix a limitation to prevent the legislature from admitting any other territory than this coming in. Of course, no other can be admitted into the State without the consent of the legislature—any other counties than those named. It is highly proper that there should be nothing of the kind; and if anything should arise to render it necessary and proper that the legislature should have undoubted authority to do it without any constitutional prohibition. That is necessary; and that is all that this tenth section contemplates, in my understanding of it; and every attempt to make it apply to everything else bearing on this subject only complicates the question, instead of making it plain only makes it obscure. Now, if the section is stricken out altogether, what would be the effect? I have no doubt, sir, that the legislature of the State could admit adjacent territory whenever they in their wisdom saw proper; but to avoid the constitutional doubt on the subject entertained by some, this section is introduced.

MR. HALL of Marion. I only design to say that with the explanation I am satisfied that the section is not subject to the objection that I suggested in the onset; and I, like the gentleman from Kanawha, am opposed to the amendment and think the provision is right as it stands.

MR. PARKER. It seems to me the only question here is whether this Convention shall submit the question of the acquisition of territory by the State of West Virginia after it shall have been organized; whether the Convention here shall confide to that State the power of admitting additional territory after the new State shall have become organized; and whether then it shall embrace the seven counties which I understand have nothing to do with this question so far as the first clause is concerned, or whether they shall be excluded by their act in failing to comply with the conditions.

It seems to me that, of course, this power of acquiring new territory must reside either in the people or else in the legislature. Well, now, the single question is whether there is any difficulty, or hazard, or risk in the Convention which now represents the people conferring this power on their legislature. It seems by the Federal Constitution that in the wisdom of the framers of that instrument the legislature of a state is a fit and safe repository of the power to which to intrust the erection of new states. I refer to the provision that says that new states may be erected out of any pre-existing state or parts of any other states; provided the consent of the legislatures of the states interested and the consent of the Congress shall be first acquired. It would seem, therefore, Mr. President, that the framers of the Federal Constitution thought the legislatures of the states were a safe depository of this power, and for between seventy and eighty years that power has been held by the legislatures without any complaint of abuse, so far as has come to my knowledge.

That seems to be, in fact, the whole question here. Whether the people shall retain this power or whether it shall be confided to the legislature. In the present state of our country and of public affairs, it certainly is not improbable that before a great while some other counties that we may be very glad to receive will knock on our door to come in. Well, now, the question is shall we clothe our legislature with the power to admit them? They must, of course, get the consent, as was well remarked by the gentleman from Wood, of the other parties interested, to-wit: the State they are to leave, if it be Virginia, and also the consent of Congress, because I suppose the boundaries of a state cannot be changed even by the consent of the state directly concerned, without the consent of Congress. And really it strikes me, that in the particular situation we are in, there can be no reason against it and it would be well to confide, this power to the legislature, rather than be to the trouble of having to get the people together in convention and to all the expense we would be subjected to. It seems to me the experience of the last seventy-five or eighty years the wisdom of the framers of our Federal Constitution warrant us in conferring this power on the legislature.

MR. VAN WINKLE. I contemplate, sir, when we get back to that part of this report, in accordance with what I said a few minutes ago, to offer an amendment something like the following: If the counties of Pendleton, etc., shall adopt this Constitution as provided in article, and become part of this State, then the senate shall be composed of and the house of members, and the counties of Pendleton, etc., shall constitute the tenth senatorial district; and Jefferson, etc., the eleventh. The delegates shall be apportioned to them as follows, etc., etc. It strikes me that such a provision ought to be introduced, and therefore that the section now under consideration as proposed to be amended should necessarily be construed as not referring to the seven counties. And there is an additional reason for this which I think the Convention will appreciate. If a clause like that included in the minority report, which I have endeavored to make a little more full to correspond with the language and form of the majority report, shall be embraced in this Constitution, there is nothing to hinder us from asking the consent of the legislature and of Congress without waiting to hear from these seven counties. I have considered that matter maturely, and my opinion is there will be no obstacle, the legislature giving its consent to the forty-four (44) counties positively and the seven conditionally; and of Congress giving its consent in the same way.

I therefore think, sir, that as we have passed by this question of apportionment, that this section should be considered without reference to the seven counties; and the question that would arise here simply would be as to any future acquisition of territory that might be made. As to that, sir, the section is, I think, comprehensive enough and sufficient for the purpose; and I agree with the gentleman from Kanawha, that while territory might be taken in by the legislature, so far as I am concerned if it was taken from another state, we would want the consent of that state. But we have nothing to do with that. We have got simply to give our legislature the power to act upon it; and if they act upon it under circumstances which would not be lawful—if they take the territory without the consent of Congress, their action would amount to nothing; and, therefore, we need not provide for it in this Constitution. I have no objection to the verbal amendment offered by the gentleman from Ohio; but I think we had better construe, and if necessary so alter it that it can refer to the seven valley counties.

MR. LAMB. I wish to make one remark. The gentleman from Wood will recollect that in a conversation with myself, the gentleman contemplated that that section which contained a conditional provision would have one attached to it something similar to this.

MR. VAN WINKLE. The gentleman will remember that the matter of boundary was referred back to the boundary committee. That will come in properly at some other place.

MR. LAMB. The representation section in regard to boundary, that boundary would be conditional, necessarily ought to be taken into consideration at the same time that this is. Something of that nature ought to be in the Constitution somewhere, but from the conversation that I had in regard to the matter, I did not think it would be proper for me then to insert it in the report of the Committee on the Legislative Department.

While up, I may mention that I find provisions, incidentally, in regard to the extension of boundaries inserted in one or two constitutions. One also contains this:

> "The legislature shall have power to extend this Constitution and the jurisdiction of this authority over any territory acquired by compact with any State or with the United States, the same being done by the consent of the United States."

It was unnecessary to insert the last clause, because if the consent of the United States is necessary we can neither provide for it one way or the other. If additional territory is to be admitted, in any case, it must, of course be with the consent of the necessary parties. That is necessarily implied, and it is not necessary to incumber the provision with the verbiage.

MR. PAXTON. What is the position of the question now before the house?

THE PRESIDENT. The gentleman from Kanawha moved the adoption of the tenth section. The gentleman from Ohio moves to amend. I will ask the clerk to report the amendment.

The secretary reported the amendment as follows: Strike out the 98th and 99th lines and the words "and in such case" in the 100th line and insert: "If additional territory be admitted into and become part of this State."

MR. PAXTON. Then a motion to amend the amendment would be in order. It appears to be conceded that this section has no reference to the seven counties that we take conditionally. Such being the case, and it having reference to the acquisition of additional territory hereafter, I am not disposed to give the legislature that power of acquiring additional territory. I think it would be safer for the people themselves to retain that power; and if there is a necessity at all for such a provision in the Constitution—of which I have very serious doubts—I should prefer it to be amended to read this way, by striking out of the 99th line "with the consent of the legislature," and insert instead: "only with the consent of the qualified voters," so that the section would not commit the power to the legislature, but the people themselves should reserve this right and that it could only be exercised by the consent of the people.

MR. HERVEY. It seems to me the amendment as proposed by the gentleman from Ohio is eminently proper; but I cannot see the force of the objection of the gentleman who was last on the floor. If the provision as amended by the gentleman from Ohio is inserted, the legislature must conform to the will and wish of the people. And I must say that I am opposed to the section as it stands. Do those first two lines state a fact, that additional territory may be acquired and become a part of this State with the consent of the legislature thereof? Is that true? Would it be true if adopted? I humbly conceive that is not the way by which States acquire additional territory. Consequently the propriety of striking out is to my mind, eminently proper; and that the amendment of the gentleman from Ohio (Mr. Lamb) would place the section in proper shape and meet the case fully. I cannot conceive that the amendment to the amendment as suggested by Mr. Paxton will meet the case any more fully than the other.

MR. BROWN of Kanawha. In the amendment proposed by the gentleman from Ohio (Mr. Paxton) it seems to me there is introduced a very cumbrous mode of ascertaining the consent. It seems to me that whenever the question is propounded to the State by any territory, or persons inhabiting it, and the consent of Congress and of the other state from which the territory is to be obtained—when all those conditions are complied with and the simple question is then submitted to the people of West Virginia whether they desire to have it incorporated with them, it seems to me that the legislature is the proper tribunal to determine the propriety and judge and decide in the case. The legislature represent the perpetual will of the people. They are better competent; they have a better opportunity of deciding. You can never submit anything to the people in the same definite form, and it has to go through the legislature at last, and the people can only express an assent upon some prescribed proposition. Well, while it would be possible I will admit, it is adding a fifth wheel to the wagon. It is inconvenient to express by the people, to have them vote on a topic like this, when the legislature have acted on it in one sense and are the proper body to act upon it. It seems to me that the assent of the people by the legislators is as complete in that case as it would be in any case, and ought to be. There is nothing in it that would take it out of the ordinary resolutions—that it does not stand upon that high consideration that should attach to adoption of a constitution by the people. In other words, if you were to admit a county from Virginia circumstances might so happen, that it would be the desire and policy of West Virginia to add an adjacent county, every year for ten years. If the legislature of Virginia should assent, if the Congress of the United States raise no objection and consent; yet in every case you would have to take a popular vote and the whole matter be discussed and investigated by the people, while their legislature could examine the subject, determine the propriety of action proposed and express the popular will.

I therefore must vote against the amendment to the amendment.

MR. LAMB. That is, I understand, the amendment offered by my colleague from Ohio.

The vote was then taken on the amendment offered by Mr. Paxton to the pending amendment, and it was rejected.

The question recurring on the amendment offered by Mr. Lamb, to strike out the 98th and 99th lines and the words "and in such case" in the 100th line, and insert "If additional territory be admitted into and become part of the State," it was not agreed to.

MR. HERVEY. The first part of this tenth section being an attempt, as I conceive, to re-enact a portion of the Constitution of the United States declaring who are the parties to the division or partition of states, and it failing to re-enact in full, I move to amend by inserting after the word "thereof" in the 99th line, the words: "and of the Congress of the United States." It will then read: "Additional territory may be admitted into and become part of this State, with the consent of the legislature thereof and of the Congress of the United States."

I conceive that as merely reciting the Constitution of the United States in part. It is not competent for the legislature to take additional territory from other states without the consent of Congress as well as of the other states concerned. It therefore seems to me it would be perfectly right and proper that if we enact a portion of the Constitution of the United States in this case that we should enact the balance of it.

MR. BROWN of Kanawha. If the consent of Congress is really necessary, then it is not necessary to insert it in this clause, because the legislature could do nothing that is against the Constitution, for we have already adopted a fundamental provision that the Constitution of the United States is to be the fundamental law of this State, and we have therefore enacted it in all its power; and whether we adopt it or not here, that provision of the Constitution is the fundamental law. But this kind of a question might arise. Suppose in running the boundary the line of some county falls a half mile from the top of the ridge, and you want to make the ridge the boundary, you send a commissioner to Virginia and she sends one, and they agree upon this line upon the top of the mountain instead of at the foot of it, would it be politic to include in this Constitution that that should not be done with the consent of the legislatures of the two states until you went to Washington and got the consent of Congress to a matter which they had no care about, and by the Constitution could not arrange it without the consent of Congress? When Congress might say, "settle it among yourselves; this is a matter of no interest to us." We know a case of this kind occurred between the States of Tennessee and Virginia. The former set up a claim for some fifty odd miles of territory when Tennessee belonged to North Carolina. Tennessee set up a claim for that territory when she belonged to North Carolina. She sent a commissioner to Virginia; and they partitioned it out among themselves, and there was no application to Congress. The very same kind of a case occurred in the State of Kentucky. A territory that lies between the two Sandy rivers was transferred to the State of Kentucky by a compact between the States of Virginia and Kentucky: and yet they never asked the consent of Congress. The same kind of difficulties may arise in settling the boundary between Virginia and the new State; and if you insert this provision requiring the consent of the Congress of the United States, you only trammel yourselves where it is wholly unnecessary.

MR. LAMB. If I read the Constitution of the United States aright, the consent of Congress is not required to change the boundary between two states. The whole provision which is contained in the Constitution of the United States is in the third section, fourth article. It requires the consent of the legislatures of the states concerned as well as of Congress, in certain cases that are here specified. The first is that of the admission of a new state by Congress into the Union. The change of boundary between two states is not the admission of a new state. Then, again, the formation or erection of a new state within the jurisdiction of another state. A simple change of boundary between two states is not included within that. Then again, it prohibits, without such consent that any state should be formed by any two or more states without the consent of the legislatures and of Congress; "nor any state be formed by the union of any two states or parts of states." In all these cases the consent of the legislatures and of Congress is necessary. There is no case specified here unless a different state is to be formed; a new state is to be taken into the Union; a state formed within the jurisdiction of another; and where a state is to be composed of two adjoining states or parts of states; and in such cases only does the Constitution of the United States require the consent of Congress.

But independent of any question of this kind, why is it necessary to encumber the clause by reciting all the consents which must be had before additional territory can be brought into the State? We all know that additional territory can not be brought from an adjoining state without the consent of the legislature of that state. If the consent of Congress is also necessary, of course it must be had whether we put it in here or not. If we specify one we should specify all. The section of itself carries the necessary inference that the consent of all parties is to be had which is necessary to the admission of the new territory; and it is not necessary, it seems to me that we should go to work and specify what parties should consent.

MR. VAN WINKLE. Neither this amendment nor the discussion of it is pertinent. This section has already been amended, on motion of the gentleman from Ohio so that this clause reads: "If additional territory be admitted into and become part of this State, the legislature shall provide by law, etc."

A MEMBER. That has not been adopted.

MR. VAN WINKLE. I beg pardon.

The question was taken on the amendment proposed by Mr. Hervey and it was rejected; and the question recurred on the adoption of the section.

MR. BROWN of Preston. I was under the impression that the tenth section here was intended to provide for the territory lying along the Potomac river which was to come into the State conditionally. I had no other understanding of the section, and in that view of the subject I propose to offer this amendment, or rather substitute for the whole section:

"10. If the counties of Pendleton, Hampshire, Hardy, Morgan, Berkeley, Jefferson and Frederick shall become part of this State, in the manner provided for in this Constitution, the legislature may provide by law for the representation of the white inhabitants thereof in the senate and house of delegates, in conformity with the principles set forth in this Constitution; and the number of members of which each branch of the legislature is to consist shall thereafter be increased by the representation assigned to such additional territory."

MR. HALL of Marion. Mr. President, that is all provided for elsewhere in other reports. The effect of it would be just simply to strike out the tenth section. In lieu of striking out, if the section can be rejected it will be stricken out; and I should much prefer that the matter would be decided on the simple motion to strike out; or vote down the section which would strike it out, because the matter proposed by this substitute relates to another matter entirely.

THE PRESIDENT. The Chair would express this doubt to the gentleman from Preston. It strikes the Chair that the subject introduced in this amendment is precisely the same passed over. The provision is made in the latter part of this report, which is passed by, for the representation of the counties of Hardy, Hampshire, Pendleton, etc. Therefore the Chair will have strong doubts whether the amendment would be in order. Indeed, the Chair is of opinion that it would not be. If the gentleman from Preston will turn back to the report as to senatorial districts, etc., he will find that that part of the report passed over relates to this subject.

MR. BROWN of Preston. I withdraw the amendment, sir.

The question recurring on the tenth section, it was adopted.

The Convention then, at 12:30 P. M. took a recess, and reassembled at 3:30 P. M.

THREE-THIRTY O'CLOCK, P. M.

In the absence of the President, Mr. Soper, on motion of Mr. Lamb, was called to the Chair.

MR. LAMB. When the Convention adjourned at half past twelve, they had just adopted the tenth section. The matter under consideration, I take it, is the eleventh section. In reference to that section I would beg members, in the first place, to note a correction. The word "votes," in the second line should have been printed "voters."

The section was reported as follows:

11. The legislature shall have power to provide for a registry of voters, and to prescribe the manner of conducting and making returns of elections, and of determining contested elections. They shall have power to pass all laws necessary or proper to prevent intimidation, disorder or violence at elections, or corruption or fraud in voting.

MR. LAMB. In explanation of this section, I would merely say that our present Constitution prescribes that the general assembly shall provide for the periodical registration in the several counties, cities and towns of the voters therein. The alteration made by the committee is in the words "have power," not making it imperative. As to the subsequent clause of the section it is substantially the same as the thirty-eighth section of the fourth article of our present Constitution, which provides the manner of conducting the registration, and that any cases not specially provided for should be prescribed by law. I presume there will be no objection to that section.

MR. DILLE. I move the adoption of the eleventh section.

The motion was agreed to.

The twelfth section was reported as follows:

12. No person shall be a senator who shall not have attained to the age of twenty-five years; or who was not, at the time of his election, entitled to vote in the senatorial district for which he was chosen. And no person shall be a delegate who was not, at the time of his election, entitled to vote in the delegate district or county for which he was chosen.

Nor shall any person holding an office of profit under this State or the United States; any minister or priest, of a religious denomination; any salaried officer of a banking corporation or company; or any attorney for the State, be a member of either branch of the legislature.

No person who may have collected, or been entrusted with public money, whether State, county, township or municipal, shall be eligible to the legislature, or to any office of honor, trust or profit, under this State, until he shall have duly accounted for and paid over such money.

If a senator or delegate remove from the district or county, for which he was chosen, his office shall be thereby vacated.

MR. LAMB. I would ask that it be considered by clauses. It is divided into paragraphs in printing.

The first paragraph was reported as follows:

12. No person shall be a senator who shall not have attained to the age of twenty-five years; or who was not, at the time of his election, entitled to vote in the senatorial district for which he was chosen. And no person shall be a delegate who was not, at the time of his election, entitled to vote in the delegate district or county for which he was chosen.

MR. CALDWELL. I ask the Convention to remember, sir, that in establishing the right of suffrage, it declares that a citizen of the State one year and a residence in the county thirty days constitutes the right of suffrage. Now, from the argument had yesterday by the very distinguished gentleman from Wood and other members of the Convention, I am satisfied in my own mind that something more than a thirty day man should be selected as a senator. Under this clause, any one who has been in a county or who has resided in the State, or who has, in fact resided in the State anywhere, and happens to have come into the senatorial district—thirty days previous to the election, is made eligible as a senator—I think, sir, the period should be longer; and, in order to test the sense of the Convention on the subject, I propose an amendment: In the second line of the paragraph after "who," strike out all to the end of the sentence in the fourth line, and substitute: "shall not have resided within the senatorial district for which he was chosen two (2) years next preceding his election."

MR. LAMB. It may be recollected by the Convention that when the report of the Committee on General and Fundamental Provisions was under consideration, the ninth section of that report was passed over—I believe at my suggestion—until the report of the Committee on the Legislative Department should be considered. The ninth section of that report fixes the age of a senator at twenty-five years, and requires them to have been citizens of the State for five years next preceding or at the time of the adoption of this Constitution. It did not require at all any residence in the senatorial district. It required the age of twenty-five years, that the party should have been a citizen of the State for five years next preceding the adoption of this Constitution. In selecting between the two plans, I have no doubt you will require some to be residents at least within the senatorial district. The question then would recur between the two plans, whether you would require in addition to this a prolonged residence in the State. This requires five years; the amendment offered requires two years. I find different provisions in different state constitutions on this subject, some of them like our own. Some state constitutions like ours require only that the senators should be voters within the district. Some of them require a residence of three years in the state and one year in the district; others two years in the state and one in the district, and others five years in the state and one year in the district. I do not know that for myself I should have any objection to seeing a prolonged residence in the State required for the senator if it is not extended to the house of delegates, though I think the provision would answer very well as it is. I wish merely to state to the Convention the different forms in which this provision in different constitutions have usually been presented in order that they may make their own selection in regard to these different plans.

MR. POMEROY. Mr. President, I cannot conceive of any benefit that would arise to the people from the proposed amendment of the gentleman from Marshall. The person becomes a voter—we have all settled that—by a residence of one year in the State and thirty days in the district in which he proposes to vote. The thirty days is three times as long as required in some other States of the Union. Now, in regard to a man being a senator, whether we adopt double or single senatorial districts, is it to be supposed for a moment that the people will select a man that has not resided within the bounds of the senatorial district for thirty days preceding the election? If the suggestion of my friend from Doddridge be true that people are accustomed to attend these military musters preceding an election to show their love for the dear people and influence their votes, they would have to be moving around more than thirty days before the election; and I think it reflects on the intelligence of the people in these districts to say that they would fall into such an error as to select a man over all their own prominent citizens, those that had resided for years in their district, that had appeared among them within the short period of thirty days. I do not think the people would do so. I do not think there need be any apprehensions on that subject. I am in favor of giving the greatest liberty to the people and let them select their own officers and be the judge of who is the best man to represent them. I do not think it would require a man to be in a senatorial district two years to fit him to discharge the duties. I am very well satisfied with this the way the committee have left it. As far as the particular portion of the section we propose now to amend is concerned, it is very well the way it is. I have no idea the people will in one case in ten thousand select a man as senator who has not resided more than that time in the district—and I question if a case of that kind ever occurred in the history of the government. Our senatorial districts will be different to what they are in many other States. They will be extended districts. Would it be likely that a man who had resided there no longer than thirty days would be so acquainted with the people and know the particular way to reach every particular man so as to influence him in casting his vote that he would run the risk of offering himself against a well acquainted citizen? Would not a man who knew all the crooks and turns, and who knew the different ways of approaching the people have a decided advantage over a man of that kind? And would a man risk his reputation before the people on so short an acquaintance with them? I think there will be no difficulty on that point at all. I think the people will select the best men, and they will select them on account of past services rendered in other positions of profit and trust; and I think there may be no apprehension on that subject at all. I merely speak on this point because I conceive there can be no difficulty on this point and therefore I must oppose the amendment of my friend from Marshall.

MR. HALL of Marion. I must differ with my friend from Hancock and say that while I have all confidence in and would always trust the people, yet I would always shield them. And I do not know whether that suggested the matter to my friend from Marshall, but I know that Marshall county furnished us with an aspirant who did not wait two weeks until he was laying his plans to fill the offices in the county because he had been born in Marshall. I have no idea of holding out any inducement or making it even possible for a man who has been so short a time as this would allow in a community to ask the people for their confidence or any position whatever beyond the privileges of a citizen. I know, sir, that we have had in times past—I trust it may not be so in the future; but we must judge the future by the past—I know the time has been when men moved from place to place for the express purpose of holding their votes, from one place to another and undetermined where they would go to; and if they had only had the facilities this proposes the offices would all have been disposed and arranged at Richmond, and the men would have come up and accomplished this, that or the other particular purpose. I am very much in favor of the amendment, and I would even favor a longer time had it been so made. I think people ought to know long, well and thoroughly the men they entrust their interests to in any of these public capacities. We know that in the very nature of the people of the country, every honest man thinks because he is honest everybody else is honest. A man approaches him, is plausible, loves him and loves his children, kisses them all—and the wife too perhaps—palavers, and reaches them by a means that no man who is fit for a position would resort to. Yet that is the common machinery by which men attain positions or office. Now, sir, I want to be rid of it. I wish we could incorporate a clause that no man who ever seeks an office should have it; and let offices seek men, and not men seek offices. I want to put a barrier up to these traveling politicians, and this is the very thing that will do it. Many a man can run very well for thirty days or for one year who could not stand the test of two years acquaintance to save him; and I want every man to be tried and to be known; and I want that he shall remain in the community, district or whatever he proposes to represent so long that he will not only have an interest, not only know something of what are the interests and wishes of that people, but that he will have an identity of interests with them: that he may represent himself as well as them. And I do think, sir, that two years is a short enough time. I do not believe I would vote for a man for constable until he would have a two years residence. I do not think any man ought to be elected short of that. If these traveling office seekers are so hungry that they cannot live among the people two years, let them go to some other state or stay where they are. I trust, I think, that we shall suffer nothing by this restriction; because I trust we shall always have men enough who have been residents to fill all the offices and positions; and I trust that unless and until we can find we are at a loss for men, residents whose interests are ours and whom we know thoroughly, that we will insist upon this restriction. I wish my friend from Marshall had made it longer. I am something of a "know nothing" in this respect. I would not put a man in a position of trust on an acquaintance of a few months.

MR. STUART of Doddridge. I as one of the members of this Convention am for the most liberal Constitution we can get up; and it appears to me the position of the gentleman from Marion would be a reflection on the intelligence of the people. Now, sir, he seems to want to stop these peddling politicians. I am perfectly willing to say to my constituents, if my friend from the county of Marion comes over there and I happen to be a candidate, that if they like him better than me they can take him. It would be much more liberal and republican to leave the people to decide as to this question of the merits and demerits of candidates. That may be left before them and not restrict them at all. I want to leave them at perfect liberty to select whom they may if they come within the constitutional provisions—one year in the State and thirty days in the district. I believe we have adopted that section in the chapter on fundamental provisions. Well, sir, why deviate from it? If that was our sentiment then, why deviate from it now, unless you want to cast a reflection on the intelligence of your constituents whom you expect to cut off into senatorial districts.

I merely got up to say that I would vote against the amendment, and ask the Clerk to read the amendment again. It seems to me there is an inaccuracy in it.

The amendment was reported by the secretary:

In section 12 strike out from "who" in the second line to the end of the sentence and substitute: "shall not have resided within the senatorial district for which he was chosen two years next preceding his election."

MR. STEVENSON of Wood. Mr. President, I wish to amend the amendment of the gentleman from Marshall by striking out "two years" and substituting "one year." Seems to me that would be better. I think the argument a good one, sir, which requires persons aspiring to either the house or senate to have resided a year or six months in the district from which they are elected. I do not think, sir, that the argument which will extend the right of suffrage to persons in a district thirty days after they have become citizens of the State will apply with equal force in favor of aspirants to office. I think it is not likely that many persons can be properly qualified to represent all the interests of a district who have resided in it only thirty days; and I think it well enough to provide against the advantage which might be taken (though very rarely) of this provision as it stands. I do not suppose that such things would occur often; but they might occur. Things not unlike them have occurred in my recollection and I think will occur again if this provision is not changed. I favor, however, a shorter rather than a longer term. Six months would suit me; but if it would please the Convention better, or the friends who wish to prolong the time, I will offer the amendment for one year.

MR. BATTELLE. It seems to me the principle involved is this: shall the people have the perfect liberty to select from among the citizens of their community, and from among all of them the men whom they prefer to represent them or not. For one, sir, I am disposed to answer that question all the time in the affirmative, without any lets or hindrances whatever. It might be a matter of not very good taste, certainly, for a gentleman who went into a senatorial district within thirty days before an election to offer himself as a candidate; but whether it is proper for him to be elected or not is a matter for the people to determine. I do not understand exactly the argument of one gentleman on the other side. He would seem to represent that all the injurious electioneering that takes place is on the part of those who have been in the district only thirty days. If that be carried to an injurious extent in the country. I have no evidence that it is more apt to occur on the part of such persons than of those who have been in the district two years or twenty years. In a single word, sir, it seems to me the very fundamental principle, and one that ought not to be invaded, is that if a man is a citizen the people shall have a right to vote for him or not for him, as they please. I might think a great many things requisite as a qualification ought to be required in a senator. I might think it was very injudicious for people to vote for an incompetent man, or a neglectful man, or an unfaithful man; and, no doubt, abstractly considered, it is wrong to do all these things; but the question is: have we or anybody else the right to hinder them if they choose? As I said before, there is but one answer to that question. They have the right if he is a citizen to vote for him if they please to.

MR. HALL of Marion. Allow me to say that I do not understand this question, perhaps, or I cannot understand what we have done or are doing. The people must have a right without restriction to vote for whom they please. And yet you say in this very section that they may not vote for a man who, forsooth, has not had the good fortune to be born twenty-five years ago! If you are going to trust people, why not trust them? It is a qualification we are requiring here. Now, I ask what man can know the interests and be identified with the interests of the people with whom he has only lived thirty days? It is not the privilege of the citizen that is to be abridged but it is the right and interest of the citizen that is to be protected. Why have anything? Why not provide that you may vote for a man in Jericho? Have not I a right to vote that Letcher shall represent us? I am the people, and he is another one of them. If you carry out that course of argument, it simply argues too much. It proves so much that it becomes an absurdity. The gentleman from Ohio says he cannot understand the remark that this class of persons are particularly obnoxious to the charge against electioneering. It was suggested that however short the time was the candidate could stir around, meet them at our musters, etc., and that people would have an opportunity of knowing him. I suppose they would stir about, and they are the very class that do stir about; and that is the very means that I am opposed to encouraging. I do not want, in the first place, that the people shall be annoyed, or that they shall be humbugged and deceived. It is no use to shut our eyes against facts. We know that people are ready to lay hold of a man who is plausible and who will put himself to a great deal of trouble to say this nice thing to them and that. We may say they ought not to be influenced by it; but when we bring it home, we are bound to say they are honest. Now, are we sent here to provide guaranties for the protection of their interest, and in what way do they suffer?

MR. BATTELLE. The point that I raised in reference to the gentleman's remarks was this: How does this proposed amendment tend to cure the alleged evil of electioneering? That is the point.

MR. HALL of Marion. It dispenses to a very considerable extent with the necessity of it. It is not necessary for them to go around and announce themselves as a candidate, etc. He is an old citizen; we know who he is. And the chances are at least as great in this case as the other that if he is a candidate they will know it, because they have had some interest in having him to be such. But if we are to be so democratic, so very careful about abridging the rights and privileges of the people; if we are to throw away every guaranty, and say that a man is to be a man with all the privileges, ignoring qualifications; and because we have reduced the time within which we require him to exercise the privileges of a citizen—that is, to vote—that therefore he may move in and possess himself! That is the idea. Now, I don't want to hold out any such encouragement. I do not want that we shall encourage men who are not qualified. Now, I say they are not qualified until they have lived longer with the people and have identified themselves with them by interest; and I repeat it that this is an invitation to that class of persons—and I suppose we will never be free from them—to establish a sort of wandering band of experimenting politicians. A man is defeated here; he makes his effort in one county, and he does something or takes some position and he finds that he never can set himself right before that people. Well, I am determined to have an office; I am just going over into this other county; I will be there thirty days before the next election, and I shall have it all right! I don't want the people to have these things inflicted on them. I want some regular rule, and if this be obnoxious abridging the rights and privileges of the people let us blot all these things out; let us not require a man to live in his district at all; let us not require him to be twenty-five years old; because, we can say, will be presumed that the people will do so foolish a thing as to vote for a candidate who is not twenty-five years old? Let us not require anything of him, because we must trust the judgment of the people. That is throwing away every qualification. Now, I don't think that is our purpose or duty; I do not think that is policy, or that there is any propriety in it. I trust the motion of the gentleman from Wood county will not be offered as an amendment to this; but if this should be rejected, he can then offer it, because it is the rule, and it is the only fair method of testing the sentiments of the Convention fairly, to try first the longest term. But if this means we are bound to try, first the shorter term, I may be led to vote against that and thus defeat that; and then there may be enough others to vote against the two years and defeat that, and leave it clear out, when if we would first vote on the longer term, and that were defeated, in that event I would vote for the time suggested by the gentleman from Wood. So I trust he will not offer it as an amendment to the amendment. He might indicate that if this amendment is rejected he would offer that as an amendment. I do think it is a matter of great importance to have a rule prescribing this qualification; and I trust the time may be not short of two years. I do not believe we are going to be so hard run in any community as to have to import men to fill the offices; and it is a very safe method of filling them. I do not see why men who move into a community should not be willing to wait two years. Let them tarry in Jericho until their beard grows a little bit. And so far, then, as the people are concerned, I do not think they will feel that they are very badly off, if they have all the rest of the regular community to select from—that they cannot select an outsider. I see no good in throwing open this thing, but to my mind there is great evil to grow out of it. If it be argued there is no evil, there will be evidently no great annoyance to the people.

MR. POMEROY. Is it the amendment to the amendment that is before the house?

MR. STEVENSON of Wood. Yes, sir; I insist on it.

The Secretary reported the amendment, being Mr. Stevenson's motion to amend the amendment by striking out "two years" and substituting "one year."

MR. STUART of Doddridge. Seems to me the gentleman from Marion is a little dizzy on this subject; and I am inclined to think he was hurt by that fellow from Marshall.

MR. CALDWELL. From Doddridge.

MR. STUART of Doddridge. I think we never sent any from Doddridge.

Now, sir, he asks the gentlemen who have been opposing this amendment why it is they make any restrictions at all. So far as I am concerned, simply because I oppose this amendment I am not advocating the twenty-five years at all. Do not understand me so. I would be willing to go down to the fundamental principles adopted: every freeman who is entitled to the right of suffrage should also enjoy every other privilege as a citizen. There are reasons why we require thirty days residence in the county, and those reason do not apply in favor of the motion to amend. The reasons were, I believe—and they perhaps should influence every member to adopt the thirty days—to prevent the citizens of one county from being deported into another. I would be willing that one hour should entitle a man to the right of suffrage in the county if he went there with the intention of remaining and being a citizen. But it was to preserve the purity of elections, I understand that the thirty days was adopted. The same policy applies to a residence in the State one year. But it does not apply to a district of country who propose to elect a senator; because, sir, I hold that the people who are called upon to cast their suffrages are better qualified to say who they want to represent them than we would be. If they should elect a gentleman who has not been a resident more than thirty days, it would be for some peculiar reasons, some motive—some object in it they wanted to carry out; from the fact that they had no man in the district as well qualified to represent them. And if they had no man, let us not curtail their privileges. Let them be the judges; and if they are citizens and remain, they have a right to judge this matter and I am willing to be governed by their judgment.

Now, I hope the fellow that went up from the county of Marshall did not hurt the gentleman so very badly; because, I apprehend he did not get his office.

Another reason the gentleman assigned was, because he did not want the good citizens to be annoyed by these office hunters. Why, sir, they could only be annoyed by them for thirty days while the other way they might be annoyed for a year; and it will avoid that great annoyance the gentleman seeks to avoid; it will reduce that evil.

MR. HALL of Marion. Allow me to say I feel some interest in this question; and if I am capable only of personal considerations I will not vindicate myself here. I trust we will act on this matter with reference to a principle; and I do not think it is any joke. Allow me to say for the information of my friend from Doddridge that I never was a candidate for any office in my life; so he could not have hurt me in that respect. I have had the honor to fill honorable positions, but they came to me unsolicited. I alluded before to an instance in point—to a party who started from this city, sought office here; went to Marshall, sought office there and was defeated; came to Marion, sought office daily and continually almost immediately upon his coming among us and so long as he remained, was defeated always; and what was the result? Has been the source, sir, out of his chagrin, of more trouble in our county than any man in it for more than four years—has been the origin of more than twenty-five indictments for felony in that county. It is against that peddling class that I want to be protected; and I do not want to invite them. We have had enough of them imported. Yes, sir; our people had the discretion not to entrust them with office, but it has not freed us from the annoyance, or pestilence, of that class of persons. I trust I am influenced in this matter by motives that are of a higher consideration than any pique; for in anything that I may have felt in this, that or the other particular instance, fortunately I have never been in a position to be hurt; and I will not be ungenerous enough to say that anybody who is opposed to this restriction will be influenced by the motive that they want to flatter the whole people. I shall not be influenced by any such thing, and will not be ungenerous enough to suppose that anybody will. But I trust we will act on this matter as a sober matter. I do not think it a matter of jest or of no importance.

MR. POMEROY. I do not think there is any person disposed to treat it as a matter of jest.

MR. SINSEL. I would like to hear the fifth rule read.

MR. POMEROY. Very well, sir; I will wait on you.

The secretary read the rule as follows:

"5. No member shall speak more than *twice* to the same question without leave, nor more than *once* until every other member intending to speak shall have spoken."

MR. POMEROY. Very well, sir, that does not apply to me for I have not spoken on this question at all. The gentleman from Wood moves an amendment to make the time one year. Of course, I would favor that in preference to two years. But I will restate what I stated before that I believe that when a committee appointed by this body has made a report, while that report is open to amendment, there ought to be some good, weighty and practical reasons why they offer that amendment. I do not say that there cannot be such a reason at this time, but say I do not perceive there has been any reason of that kind offered. I think it was fully answered by the gentleman from Doddridge that a man cannot annoy the people as much electioneering in thirty days as in one year. The new candidate who has come into the field has a large district to traverse, has names to learn, and labors under many little disadvantages; and he cannot annoy the people of the district as much in thirty days as the man who has been on the ground. He begins to lay wires a year beforehand and greatly annoys and disturbs the peace and quietness of the people. And therefore the argument will not hold good, that a man that has thirty days can annoy the people as much as a man with 365 days, unless his capability is much greater.

The great principle that I contend is at stake here is that you reflect on the intelligence of the people. You say they have not sense enough to know whom to elect; that in preference to a man who has resided in their midst twenty years, they will, if you allow them, elect a man who came in only thirty days before; that they will be so carried away with this new man, that any district, (or double districts, comprising some 32,000 people, and single ones somewhere from 16,000 to 20,000, down I believe as 15,000) —that a majority of the voters out of such a population are so ignorant of what they ought to do in selecting a man to represent their interests that they will not know what their interests are in the senate of the new State; that they would select a man who had just come among them. If you say they will not do so—and the gentleman assumes to, says he knows of no case where they ever did do so; says they failed up in Marion county and doesn't want the idea to go forth that they have not intelligence enough to select one of their own residents—why then what is the objection? Why simply that you will be "annoyed." Well, now I do not know that Mr. A. will annoy a man any more than Mr. B. will. They seem to take the ground that there is something very annoying about this new man. Well, now, it is generally the reverse of that. A man is called to stop his team to talk to him for years, and of course his talk is as "tedious as a twice told tale"; but here is a new man comes up. Well, although I may not wish to stop here, I want to see what this new man has to say. And he takes it as a favor rather than as an annoyance. It is one of those real office seekers, that is always laying the wires for the election that is to come off, that annoys, and he is more likely to be an old resident than a new one. It is not the new man at all. He is not acquainted with the people. He doesn't know, what kind of influence to use on this man or that; he does not know like this old resident. The latter says, Now Mr. A., I want you to go to the polls and vote for me; and as you have a great deal of influence I want you to get a lot of other fellows to go too. The new man doesn't approach Mr. A. in that way and therefore does not annoy him. And now if there is no case in which one of these "peddling" office seekers was ever elected senator, when there was no such limit required, why does the gentleman offer this amendment? I have no doubt he does it in good faith. I know that my friend from Marshall will understand that I do not mean anything unkind. But I am in favor of the people having liberty to choose their own officers; and then if they make a bad choice, they will be very likely to rectify it next time. I do not want to say to them you shall vote for certain men who have lived in the district a certain time. If a man is qualified for office he will be likely to remain, and if unsuccessful, he would not be likely to run the hazard of moving. As has been said by my friend from Doddridge, I believe in the greatest liberty in letting the people select their own officers. As for the provision requiring the age of twenty-five years, we have never voted for it and I do not intend to. If the people see proper to elect a man of twenty-one years, let them elect him. As Henry Clay said to John Randolph when he went to the United States Senate: they asked him if he was old enough, and he said they could ask his constituents!

One of the arguments used here is that if we do not adopt this we might as well not have any restrictions. Why have any if we do not have others? Well there may be too much restriction. Certain restrictions may be safe and wise, and certain other restrictions may be radically wrong. You may pass a point where it will not be right to restrict, and I think that is true in regard to the qualifications of men. First, let me refer to another argument. Suppose they make as is proposed, one senatorial district of Brooke and Hancock. Now, when any of the prominent men from the county of Ohio that have been in the legislature and in the Convention—we are just as familiar with them as with our own men—suppose one of those men should move into Hancock from Wheeling. When we vote for him, are we voting for a stranger? No, we will vote for this man because he has had more legislative experience. So he is a better man than any we have, more intelligent, has had far more experience as a member of the legislature, because he knows our wants and will carry out our wishes better than any of our own men. Why have not we a right to select that man? Yet under the proposed restriction we must take an inferior man and be deprived of the services of the better man merely because there is a line drawn over which he cannot pass and he must come up to the requirements of this requisition. The gentleman from Marion says there is a principle at stake. I believe there is too; and I believe the sound principle is on our side of the question. I do not say anything against the belief of those who differ with me. Of course, they believe the correct principle is in their side. Very well. It is before the Convention. It is for them to say. If they want to pass this restriction, very well; but I believe we ought not to do it. I believe the committee made this report because they had good reasons for doing so; and unless there is a more weighty and powerful reason otherwise than any I have heard yet, I would be in favor of adopting that portion of the report, and I am opposed to striking out.

Mr. President, I have spoken once on the amendment. I want that distinctly understood, so that if I should have to speak again I would not be precluded.

MR. CALDWELL. My friend from Hancock has not had any sufficient reason assigned on behalf of this amendment. I fear anything I may say will not warrant him, perhaps, in voting for it. However, I will say, sir, as I said when I first offered it, that my object was mainly to maintain some distinction between these two houses. I want it kept up to some extent, not only as to the age of the individuals who are qualified for office but also as to their other qualifications, and it was for that reason, and that chiefly, that I offered this amendment. However, in answer to my friend from Hancock: if he were to go down to my district, with the acquaintance I have had with him, and with his knowledge and efficiency in legislative bodies, I might not incline to oppose him, although he had been there but thirty days; but I fear very much, sir, if I were to move up into his district, being myself an entire stranger, I think I would be treated as rather a pestiferous knave, a very embarrassing politician because after a residence of about thirty days I aspired to the office of senator from his district; and notwithstanding the views held by him and his particular friends, the people having the right to select their representative, I might through my endeavor and skill in electioneering, prevail and secure my seat. I think, sir, the reasons and arguments assigned by the gentleman from Marion are sufficient to induce (at least I hope so) a majority of this Convention to vote for the amendment. I think this distinction should be kept up. Let us say not only that a senator must be twenty-five years of age, but this other qualification shall also attach to him that he shall be a resident at least two years in the district before he can offer himself as a senator. Now, sir, if this distinction is not preserved and carried out to this extent, the argument of the gentleman on the other side leads to a conclusion that we need have but the one house: dispense with the senate entirely. Sir, in answer also, I would say this to my friend: this opposition to restricting the people—for that is your privilege, sir—if you are to strike out, he himself says he is not in favor of the qualification of twenty-five years. If you strike that out, you may as well dispense with the whole section entirely, and leave it to the sovereigns who shall elect the house of delegates. If you go so far as the people of Marshall county (which I have the honor in part to represent) did in the election of delegates to this Convention. A gentleman who had been but six or seven months in our county; under the Constitution you remember, was entitled to sit in the legislature only where he had been a resident of the State two years and one in the county. Yet the people of Marshall chose to elect a delegate to this Convention who had been in the county but six or seven months; and he is here as a member of this Convention. Well, sir, if this is a grand principle that candidates are not to be restricted I do not see any necessity for this section at all and let the people have unlimited choice for those who are to represent them in the senate and house of delegates.

MR. BROWN of Kanawha. I beg leave to make a remark or two. The argument of the gentleman is to the effect that this requirement of two years for the senate before he shall be competent to hold office, by a residence for that time in the senatorial district is a restriction on the larger liberties of the people in that it is a diminution of the number of the persons from whom the people are to select their candidates, and rather therefore a limitation on the people than on the candidates. Now, sir, I think the argument is fallacious; wholly so, and while it is specious, it is calculated to delude. I am one that feels a good deal of aversion towards restricting the people of their liberties in any case which is not necessary. But I maintain this is not a restriction of the liberties of the people. The people always choose from candidates that are before them. The instances are very rare of their choosing a candidate. Candidates generally put themselves forward, either directly or indirectly through their friends; and it is a very rare occurrence that you find men running against their will for any office. Some such cases do occur, and men may then defer to the wishes of the people. But these cases are very rare. I take it for granted that in the great mass of cases, whoever is voted for by the people is a candidate before the people for their suffrages, and they have to choose between the one or the other; and that it is no limitation, therefore, to require that these candidates who do present themselves shall be men who do come up to the standard the people have prescribed. Now your principal object in regard to candidates coming before the people is to prescribe some rule that secure to the people a good set of candidates out of whom they shall choose one. Now, sir, we have resorted to the system of the caucus—which has had the denunciation of almost all good men because of the iniquities it often works in presenting inefficient and bad men, to the people, and then they have no alternative. The great object is to get some plan by which you can secure the presentation of the best men in the community for the office. The people will exercise their choice between the one, two, three, four or five, or a dozen, if you have so many. Now by prescribing a residence of two years, you are much more apt to have candidates who are competent and good men elected than if we prescribe a residence of but thirty days. You are not going to have any more candidates under the one system than under the other. You will always have, perhaps, five candidates for one office. Now, if you say thirty days, you are not as likely to have competent men to choose from, who by residence have shown common interest and community of feeling with the people who elect them to office, as if you require a residence of two years. I, therefore, think the recent rule in prescribing these qualifications is a good one, a sound one; and I shall vote for the term of two years.

MR. STEVENSON of Wood. I scarcely ever speak twice on the same subject; but now I only wish to add one thought more in explanation of what I said before than anything else. There is a good deal of truth in all that has been said about the evils which attend this system of electioneering, but I do not think it amounts to much on either the one side or the other; because I think this system of electioneering, as it is called is very desirable when properly conducted, as I believe it is in a majority of cases. I think it very desirable the people should know the men who are seeking office—that they should have personal conversation with them, and become acquainted with them so to learn as far as possible their ability to discharge the duties of the office which they seek. I do not care whether it is thirty days or two years. Probably one year or two years would not be too long to discover the true character of a man who is aspiring for public position. But the argument which I wish to present is this: and I think it an unanswerable one; because I believe that in this thirty day provision there will be advantages taken of it. It is a comparatively new thing, so far as my information goes. I think there are very few, even late, constitutions that make so short a time as thirty days residence to qualify a man to be elected to one of the most important positions in the State. In the late constitutions I think generally they have it from six months to two years, as the time required not only for the person to be a citizen of the State but an actual resident in the district. Now, sir, the reason I suppose is this: that the man who is to make laws to govern a district, or participate in making them, cannot do so properly or intelligently unless he is acquainted with the interests which he pretends to represent. Now, sir, taking one of the large districts marked out in the report of this committee, can any man become acquainted with the interests of these people in thirty days? In any one of these districts? Here is the agricultural interest; there are the commercial interests, banking interests, educational interests, the moral and other interests of that district; and they should be comprehended, at least to some extent by any man who is to represent that people in the law-making department of the State. Now, it is impossible that a man can do it in so short a period of time. But I do think, sir, that two years is too long. I think one year probably would be better; and that is the reason why I have offered that as an amendment to the original motion of the gentleman from Marshall. But as some of its friends think that amendment would be endangered or weakened, or at least that they cannot get a fair expression of the Convention upon it while my amendment is pending, I propose to withdraw it for the present, with the understanding that I shall renew it if the two years amendment is voted down.

The question was then taken on the amendment offered by Mr. Caldwell, requiring a residence of two years in the senatorial district, and it was rejected.

The President resumed the Chair, which had been occupied by Mr. Soper.

MR. STEVENSON of Wood. I propose now an amendment in the same form as that offered by the gentleman from Marshall, only making it read one year instead of two years.

The Secretary reported it:

In section 12 strike out from "who" in the second line to the end of the sentence and substitute: "shall not have resided within the senatorial district for which he was chosen one year next preceding his election."

MR. HERVEY. I must say that if I had known that was the course to be adopted I should have voted for "two years." I move to amend by inserting "one year."

MR. STEVENSON of Wood. This is one year.

MR. HERVEY. O, well—then—

The question was taken on the amendment proposed by Mr. Stevenson and it was agreed to.

MR. LAMB. If there is no further amendment to the first clause, I move its adoption.

The motion was agreed to.

The second clause was reported as follows:

"Nor shall any person holding an office of profit under this State or the United States; any minister or priest of a religious denomination; any salaried officer of a banking corporation or company; or any attorney for the State, be a member of either branch of the legislature."

MR. LAMB. Mr. President, I will read the provision in the present constitution on that subject.

MR. CALDWELL. Is the second clause of this twelfth section adopted?

MR. LAMB. The whole six lines were treated as one clause. If there is any misunderstanding in the house in regard to the matter, perhaps that had better be re-read; but it was distinctly stated in the commencement what was under consideration.

THE CHAIR. Is there any desire to reconsider the vote? There is none.

MR. LAMB. In reference to the second paragraph, I will read the provision in the present Constitution:

> "No person holding a lucrative office; no minister of the gospel or priest of any religious denomination; no salaried officer of any banking corporation or company, and no attorney for the Commonwealth, shall be capable of being elected a member of either house of the assembly."

A similar provision will be found in a great many constitutions contained in this book. We have reported it to the Convention as we found it. I move its adoption, sir.

MR. VAN WINKLE. I move to strike out "any minister or priest of a religious denomination; any salaried officer of a banking corporation or company."

MR. STUART of Doddridge. I move to strike out the words "minister or priest."

MR. VAN WINKLE. That is to divide the question?

Mr. Hervey rose.

MR. VAN WINKLE. The effect of the gentleman's motion is simply to divide the question.

MR. STUART of Doddridge. I desire the question divided—that is all. I want to vote against one and in favor of the other.

MR. VAN WINKLE. I moved to strike out the two clauses, and I understand the gentleman from Doddridge to desire a division of the question. One relates to ministers and priests; the other relates to cashiers of banks, to salaried officers of banks.

MR. STEVENSON of Wood. If I thought, sir, this clause would be stricken out without any discussion, I would not say anything. I am not so certain about that. I will, however, say as briefly as I can, I hope it will be stricken out; and for the reason that I think it is founded upon a wrong principle. It makes a distinction that I should regret very much to see made in a constitution that I had anything to do with. I think that ministers, if they think they can be of any benefit to the people have a right to offer themselves, just as any other man who contributes to the support of the government under which he lives.

If the people think that he can be of benefit to them I think they should not be debarred from the right of selecting him, and if they do not want him, of course they will reject him. But I do not think either the ministers or their calling will suffer, nor do I think the people themselves are likely to suffer from their selection at least occasionally. It seems to me a relict that belongs to the past; and I must say that it seems to have the odor of the "flesh pots" as my friend here (Mr. Van Winkle) would say attached to it.

Another consideration, sir, in favor of striking it out is this: that where such prohibiting provisions have found their way into constitutions they have been a dead-letter; and anything in a constitution or on a statute book that is a dead letter had better be out altogether. These are considerations that strike me just now as some at least that may be adduced in favor of making this change.

MR. STUART of Doddridge. I always have been ashamed of our constitution in this respect. Whenever I have been asked as a lawyer why it was ministers of the gospel were prohibited constitutionally, from exercising any office the people might call them to, I never could answer—never in the world. I can see no good reasons for it at all. None; and I am like the gentleman from Wood, if I thought the Convention would have stricken it out without any remarks, I should not have said a word, because I do not think there ought to be any discussion at all on this subject in an enlightened body, as we profess to be, sir. Why draw a distinction between your fellow citizens? Is it necessary to protect ourselves against our ministers? I have always looked upon them as the salt of the earth; and they were really necessary, they were our best men. I presume it will be very seldom they will be called upon or even offer their services courteously. But let us draw no distinctions between classes in our community. Let every man stand on his own bottom; and if he has merits and his people want him, why let them appoint him to the office: not say that you were not permitted to vote for a man merely because he is a preacher. That is certainly drawing a distinction and inculcating the doctrine that these are dangerous men, are to be guarded against, when they are the very men we ought to take to our bosoms and be counseled by in many instances. I am for extending the hand of fellowship to all men, equally, alike, and go back to our fundamental principles.

MR. DERING. There is no man who holds the ministry in higher repute than I do, and it is for that very reason that I am opposed to striking that clause out. I do not think, sir, that the high and holy offices of ministry should be prostituted by the ministry entering into our political deliberative bodies. If a minister is called from on high to preach the gospel, let him fill that commission and he will have his hands full. Let it be one work: and I, sir, am opposed to opening the political arena and permitting them to hunt for votes through the country and accept any political offices in our political and legislative bodies. Sir, the most of them do not do so, and I wish to make a prohibition and place a barrier so that none of them can do so. If the ministry want to enter into the political arena and become members of our political bodies, they can resign their ministry, they can abandon that high calling which they have conferred upon them and enter into the political field.

I am in favor, sir, of holding on to that clause.

MR. PAXTON. Mr. President, it appears to me this provision that it has just been moved to strike out has a very il-liberal and unrepublican appearance. It certainly has to me. It is nothing less than a direct proscription in our fundamental law of a particular occupation or pursuit, and forbidding those who follow that occupation or pursuit from all participation in the legislation of the country and, as a consequence, from the honors and emoluments of the government. Now, without regarding it in the light of expediency at all, I wish to ask what right has government to proscribe any particular occupation or pursuit? What right to discriminate for or against the pursuits or occupations of its citizens? Clearly in my judgment, none. It is a positive wrong and oppression. If any pursuit or occupation is in itself hurtful to the best interests of society, detrimental to the public good, forbid it. That certainly it is competent for legislation to do. But if a pursuit is not so but is purely legitimate, I cannot see, sir, by what right we undertake to proscribe it and deny to it the privileges and rights that pertain to every other pursuit and occupation.

Besides that, I presume it will be conceded, that ministers of the gospel and officers of banks are as well qualified by education, by intelligence and by integrity to fill positions in the halls of legislation, as lawyers, doctors, farmers or any other class in the community; and I do hope we shall not do violence to correct principle now by retaining this provision in the Constitution. I am aware it is in the present constitution and in many others; but I do contend it is a violation of correct principles. I hope it will be stricken out.

MR. LAMB. To put the committee in the right position before the Convention in this matter: The committee found this provision in the constitution (of Virginia) and they thought it proper, at all events, that the matter should be presented to the Convention. They find the same provision repeated in many other constitutions now enforced throughout the country. While they were perfectly willing to concede at once that in every nation great occasions may arise in which it is the right of the people to demand the services of the purest men and the ablest men, in whatever rank of life they may be found—as for instance when conventions are assembled for the salvation of the country or for the reconstruction of its government—yet there may be a very justly drawn or proper distinction between occasions of this kind and the ordinary occasions of legislation. Yet the Convention might very properly think that men who are devoted to the service of their maker should not interfere in ordinary electioneering matters or be in ordinary legislatures. I cannot say, however, that this is my opinion, or that any harm to the people would ever result from striking out this provision. As to the reason which is assigned for it, I find it assigned in one of the constitutions and will read:

> "WHEREAS, Ministers of the gospel are by their profession dedicated to God and the care of souls and ought not to be diverted from the great duties of their profession, therefore, no minister, etc., etc., etc."

MR. VAN WINKLE. I hope, Mr. President, most certainly, that this Convention is not going to set up and place itself between the conscience of the preacher and his God. If those objections are valid and the preacher is wrong in becoming a member of a political body, it must arise that he is violating his duty to his Maker or his duty to his congregation, and I cannot see how we are to stand between him in either relation. I cannot see, sir, that he is any more bound not to neglect his duty, than the rest of us not to neglect ours. Every man has a duty to his family which is hardly less sacred than his duty to his Maker. I might turn round and say to my friend, you ought to be at home attending to your duties to your family and not be here looking after the affairs of the public. If we had, as in England, a church supported and a clergy paid by the State, it would be a different case. The pensioners of the State would not, of course, be the persons to represent a free and independent people; but here the minister owes no mere duty to the State than to any other class of the community; and the fact that they may have a great duty to perform elsewhere ought not to exclude them from participation in whatever their fellow citizens may participate in. Sir, I believe that this would exclude positively the best class of the community. For, say what you will—and I feel free to say anything I have to say on this subject here—I defy any man to take from any community whatever any class of persons who are so influential in their daily walk and conversation as this class of persons, I do not and never could see—like the gentleman from Doddridge—I never could assign a reason to my own mind why there should be any such exclusion, and no knowledge of the way to begin to justify it in the constitutions where it has been inserted. There may be a disposition to exclude as many people as possible to make more places for the others; but I do not see any reason why if a man is permitted to exercise the right of suffrage he should not be permitted also to be a representative. We may lay our restrictions as to age or other things of that kind, because you may want that maturity and experience that can only come with age; and you can justify that because it applies to all alike; but when you single out a class of citizens on account of their occupation, you are certainly violating the very fundamental principles of free government. Equality is certainly destroyed, and that is one of the fundamental principles. Citizenship is taken away for a clearly imaginary reason.

MR. BROWN of Kanawha. I confess, sir, that I do not occupy the unfortunate position of the gentleman who has not been able to satisfy himself of any sufficient reason for this exclusion. I have a very decided opinion on it, sir. I think it is based upon good reasons. I desire, however, in commencing to say in reference to the remarks of gentlemen professing their high regard for the ministry, that I stand here and acknowledge myself second to none in my respect, admiration and devotion to the ministry. A portion of my labors are contributed annually to sustain them, and I believe the liberties of the country depend in no small degree upon the purity and integrity of the ministry. They have a high and holy calling, a sacred and separate calling; they mould the infant mind; they mould the mother that moulds the child in all its thoughts and education. They control, they regulate, all the moral conduct to a very great extent, of the father and the family. I say there is no class of men in the country that exercises the influence that they do, and deservedly. (Without that control, sir, I am one that believes that American liberty would take its flight. Turn away from us the influence of the Christian religion, kept up and sustained by the ministry of the gospel and your republican institutions would be things that were. The future would be dark and dismal. I believe, therefore, that the highest policy is to preserve the ministry in its integrity and purity. And I believe, sir, further, that the ministers themselves, of all other men in the community, would be the last to vote for that proposition; for the reason as I will endeavor to show that its tendency is to degrade and debase that ministry; that it is to draggle it, sir, in the dirty mire of the political arena; to put them on a level with every politician in the county that is seeking at the hands of the community office and emolument. That is withdrawing them from the sacred desk and from a congregation that looks to them for guidance in almost everything that is sacred. This is the very reason why I shall vote to sustain this proposition and shall expect every minister in this body to do the same.

Here, sir, I beg to notice that there is a very marked and striking distinction between the position gentlemen occupy here as ministers in this body and in the legislature we are prescribing in the Constitution. Conventions assembled by the people to form the organic law are not things of every day occurrence. They are things that arise out of extraordinary emergencies. They are occasions that occur but seldom in men's life-times and seldom in states' lifetimes. And then it is of all others, the people should exercise the unlimited control of selecting whom and when and where they please, that they may obtain the qualifications necessary to sustain and perpetuate their rights. And therefore it is that here we find ourselves, individuals called by the voice of the people without regard to office or calling or any prescribed limits upon the selection made by the people; and a man may be here though he were a citizen of the State but yesterday. That sovereignty selects the agents to come here to fix and ordain the organic law for them. Our duty is to do it wisely and well for the government and security of the people, and of our institutions hereafter, in the ordinary mutation of parties that we know every country is subject to.

And now, sir, in regard to making the ministry the subjects of the county nominations, and candidates for all the offices, political offices, legislature and senate. I would put it to any gentleman, to test the question by putting it to his own feelings to say how willing he would be to see the minister under whose ministrations he worships on the Sabbath day and in the conduct of all the beginnings of his operations, whom he consults, revering him, his office, its duties and labors—to see him descend from that high position on the election of a political party, gotten up by loafers round the town and court house, and take up the dirty work of carrying out the party prejudices of those that put him in nomination. I would like to see how long that minister could retain in that congregation, which was divided in its party feelings but all having a common respect for their minister—how long he could retain in his office, the respect, admiration, confidence and love of that congregation and community, if they saw him mounted on his horse riding around the country making electioneering speeches to secure the success of the party that had given him a nomination.

MR. VAN WINKLE. Do you advise this Convention to interfere between preachers and their congregations? That is the effect of your argument. Let the preachers and their congregations alone to determine that matter.

MR. BROWN of Kanawha. I deny that this is the scope of it. That is the inevitable result of your argument. I am conducting a question now for the benefit of the community: I am speaking of this question as a question of public policy without any reference to individual cases. I think the gentleman must feel the effect of it or he would not be so easily moved by it.

Another question, sir; I have seen parties arise in churches; and I know the minister who only pursues the even tenor of his way and knows only in the calling he has taken on himself to profess Christ and Him crucified, chooses the only way that he can keep himself from being involved in the various controversies that take place in the congregation. It is impossible that it should be otherwise and upon that harmony of these congregations depends the order and peace of society. I would not hold out any inducement, therefore, to destroy it.

Another consideration, Mr. President. We have in this country the Christian denominations of various names. Many of these called orthodox agree in the substantials of their religion; and yet they are diversified on different subjects and between them there exists strong prejudices. You, sir, start the ministry into the contest in political elections, and you will soon have a Methodist preacher running on one side and Presbyterian on the other side, and Episcopal on another, a Baptist for another side, a Catholic priest for another side; and it will not be long before you will have all these congregations by the ears. And each preacher will have all his congregation nearly when it becomes a question of denominational influence and prejudice. The question will be, which is the strongest congregation, and religion will be stricken out. The strongest prejudices that human nature can know or feel may be brought into the contest, and the fury and violence of feeling that exists between the Secession and Union parties, or that ordinarily involved between Whig, Democrat and Republican, will be as nothing compared to the violence that this religious fanaticism may soon involve. Again, sir, you will soon have the successful ones, of one denomination or another, in your legislative halls, and there the same spirit will begin to be felt, and the churches of our whole country will soon be arrayed one against the other; and you will soon find that religious sentiment, which we have been providing for will be stricken out and some religion will seek to impress its views on the government, for religion has ever sought to do that. There has never been a religious party that obtained political power that did not straightway forget the fact that religion should be addressed only to the reason and conscience of the individual, and they will seek by legislation to enforce it upon the mind. I fully believe that to be as one of the springs of human nature. It grows naturally out of power; because men hold to their religion with more tenacity than anything else; and whenever a contest arises between them and some other religion they forget all bounds. I therefore, sir, am in favor, for this reason of keeping this out of the constitution. I also have a high respect and some admiration for the system of our forefathers. I am not one of those who believe—while I have a very high respect for the intelligence and integrity of this Convention that this is the only body that obtains or possesses wisdom in the world. I believe there have been wise men and bodies before this; and what has proved itself to be wise in the eyes of others, and has come down through years, comes addressed to me with some reason in its behalf until I hear something better against it.

Now in regard to bank officers. It is true that no one questions the intelligence of these men or imputes any lack of integrity: because all accord to them the highest degree of intelligence and the most unimpeachable integrity; and the very great object here is to keep it so. Bank officers are the most respectable, intelligent men in the country so far as my experience goes in the dealings I have had with the world. But, sir, banks have their influence; and money—for banks contain money—always wields an influence. I have known in the Commonwealth of Virginia when the representatives of the banks assembled at Richmond, and I have never known legislation to be carried over the banks when they combined to effect a thing in this State. And today only remove all the restrictions that govern them and let the banks be united on one policy and there is not power in this Commonwealth to override it. Put your bank officers, then, with their influence, intelligence and money power in the State in the legislature and give them a direct vote, and you commit the whole policy of legislation into their hands irretrievably. For I maintain—while it is no reflection at all on the officers but an acknowledgment of their ability and integrity—that they are but new, like all other men, and they have these peculiar influences that always will direct them to seek the benefits and welfare of their banks; and these interests often run counter to the best policy of the rest of the community. At least, you have the one holding to one side and the other to the other; and it is bad to put the power and votes in the hands of that one side. And I say that same provision, in my humble opinion is, as respects them, well founded and wisely placed in the constitution of the State and has stood there for years, and no bad effect has resulted from it; and I am for following in the case, as well as the reason of the thing, the light of experience. I have not been able to find or listen to any argument on the other side that has struck me at all as having any weight that overbalanced the high considerations that require the officers of your new State to be outside of the control or influence of these corporations. I, therefore, sir, will feel myself forced to vote for it if no one else does.

MR. STUART of Doddridge. I believe the question is on striking out.

MR. VAN WINKLE. The debate will be now, sir. The argument all comes on now.

MR. STUART of Doddridge. Well, I expect to vote twice, anyhow. I want to reply to one or two of the arguments of the gentleman from Kanawha, for the fact that they appear to be presented with considerable force for fear they may have some effect. He desires very much to keep ministers of the gospel out of the mire and dirt of politics in the seeking of office. Why? I reckon from the fact that he wants to keep in the mire and dirt himself for seeking office is dirty work—work not fit for a minister to be in. It must be for the reason that he desires to keep it himself, a dirty business (Laughter). Well, now, I will assume that this political office seeking has become a very dirty business; and I believe the whole people of the country have become disgusted with politicians and desire to see them laid aside and not to be governed and controlled any more by old fogy politicians that we have been governed by and ruled and led by the nose by politicians; but I want to see it lifted from out the mire, and honest and pure, upright men go into office, if the people desire it.

Another reason he assigned why ministers should not be capable of holding office is that there are various religions and sects, and you will array one sect against another. Now, sir, if this doctrine is true you ought to insert a provision here that no member of the Methodist church, or of the Presbyterian church, or of the Catholic church, should be eligible to hold an office, because that will apply to them. If I am a Methodist, why according to the argument of the gentleman I would array a Methodist feeling in my favor. Well, sir, you are to exclude all the Christian religions and people belonging to the Christian churches: because if the gentleman's argument would apply to the minister it would be to the members. If I am a Methodist, hold to the doctrine, belong to the church, support the minister, why the probability is, according to the doctrine of the gentleman, that if I am a candidate it will array that denomination in my favor and other religions will be arrayed against me. But such is not the fact. People do not look at these things. They look at the candidate, the person for whom they are called on to vote. Is he qualified? Is he honest? I believe that is the interrogation propounded by the Father of his Country—is he honest? Is he qualified? Now, that is all I want to ask of any man that comes before me asking for my suffrages, and it is all I feel disposed to ask of any other man when he comes. Not "Are you a Methodist—a Methodist preacher? Are you a Presbyterian—a Presbyterian preacher?" Now, sir, to be consistent, the principle will have to be carried out; and if we exclude one class we must exclude the whole.

MR. CARSKADON. I feel some interest in this question. I was absent when it originated. I must say I am opposed to the striking out of this clause; not, sir, because I have a lower opinion than some other gentlemen of this house with regard to the ministry. I, with the gentleman from Kanawha, hold myself second to none with regard to their occupation and their calling; and, sir, I do not pretend as the gentleman from Wood would say, to judge between their congregations and them; but I say we have a right to say what kind of people shall be representatives and legislators, and the argument of the gentleman from Doddridge I do not consider of effect upon this subject. He says he would not look at it whether he was a Methodist or Presbyterian or not. He may not do it, sir; but I say the world will do it and has done it from the foundation of the world to this time. They do look at it. Such prejudices as those do occupy the minds of men and have done it, and we are not beyond that period yet when that thing is done. I say their calling is a high and holy calling, and for that reason I say let them follow their calling. That is their proper sphere, and it is not in the political arena. We have seen in the history of the world that when you array church against church such a prejudice then as the gentleman from Kanawha says takes place as does not take place with regard to other subjects; and the greatest persecution that has ever been has originated from this prejudice in what were called religious denominations. I say it is because of the high estimation in which I hold the ministry that I am opposed to their meddling, belittling themselves to peddle in politics. If they are "called" to the ministry—which they should be, and are, no doubt—then they profess to be so, that is their legitimate calling, and I do not think providence intends them to occupy two at the same time—one that of politician, the other that of minister. Therefore, I am opposed to striking out the clause.

MR. LAMB. I want to say a word or two in regard to this matter. I shall vote for striking out, but not exactly for the reasons which have been alleged. I concur entirely in the position which has been taken that as a general thing it will be most decidedly improper for ministers to turn politicians and expose that sacred office in so polluted a sphere as politics have become. But I am disposed, with the high respect which I entertain for them, to leave that to themselves. There may be great emergencies in which it may be necessary for the people to call upon them in order that we may have our purest and best men at our command. If they turn themselves into the political arena unless it is an emergency of the kind, they will lose not only the confidence of their congregations as ministers of the gospel but they will not be elected by the people. If in a great emergency they are presented by their people as candidates for their suffrages, and the emergency justifies it, it is difficult enough, even in such circumstances, to induce them to serve; but in such a case they ought to be prepared to meet the call of the people they ought to be prepared to take a position which perhaps the welfare of the country may demand them to take.

In any case, whatever may be the disposition that may be made of this clause of the report, I hope that in regard to salaried officers of banks will be retained. It should be an emergency, indeed, that would justify an officer of a bank from having any part in political matters. In the ordinary sphere of legislation he ought not to intermeddle; or if he should be called upon to do so, he should resign his office.

I was very sorry to hear an intimation given by the gentleman from Wood, on my right, that looked something like an insinuation that the committee might have reported this provision with a view to keep as many candidates out of the field of office as possible, or that any member of the Convention was acting or could act on any such principle. I can only say that I certainly disclaim it, and I would never dream that any member of this Convention was acting on any such motive.

MR. BRUMFIELD. I move that we adjourn.

MR. STUART of Doddridge. Let us settle this question.

MR. BRUMFIELD. I would prefer it not to be settled tonight.

The motion to adjourn was put to vote and it was lost by a tie vote.

MR. HERVEY. On this question I call for the yeas and nays.

The question was then taken on the motion to strike out "ministers or priest of a religious denomination," and the motion was carried by the following vote:

YEAS—Messrs. Brown of Preston, Brooks, Battelle, Chapman, Dolly, Hansley, Haymond, Hervey, Hagar, Irvine, Lamb, Mahon, Parsons, Powell, Parker, Paxton, Pomeroy, Stevenson of Wood, Stuart of Doddridge, Taylor, Van Winkle—21.

NAYS—Messrs. John Hall (President), Brown of Kanawha, Brumfield, Caldwell, Carskadon, Dering, Dille, E. B. Hall, Harrison, Hubbs, Montague, O'Brien, Sinsel, Sheets, Soper, Warder, Wilson—17.

The question recurred on the motion to strike out "any salaried officer of a banking corporation or company."

Mr. Taylor renewed the motion to adjourn, but not being heard by the Chair.

MR. DERING. I move, Mr. President, that we do now adjourn.

The motion was agreed to, and the Convention adjourned.

XXI. FRIDAY, DECEMBER 20, 1861.

The Convention was opened with prayer by Rev. James G. West, of the house of delegates; and the minutes were read.

MR. STEVENSON of Wood. Mr. President, I wish to offer a resolution and have it considered at the present time if the Convention will agree to it.

The Secretary reported:

RESOLVED, That during the session of this Convention the compensation allowed the door keepers for their services shall be two dollars each per day.

MR. STEVENSON of Wood. It might be necessary to give a word of explanation in reference to that matter. The resolution passed here a few days ago fixed the salaries of all those officers at the same they were during the June convention. The amount of two dollars a day was fixed by that convention in June; but I find in looking over the proceedings of that body in August that there was a resolution offered and passed making the compensation three dollars a day. The understanding was, I believe, that these officers should have two dollars a day; but in order to fix the matter certainly, so that all parties will understand it, I thought it would be better to have the resolution adopted. I will state also that the calculations made by the Committee on Expenditures were based on the understanding that it was to be two dollars a day.

MR. VAN WINKLE. I do not remember precisely the reasons that induced the members in August to raise the compensation; I have no doubt, however, they were good ones. I remember the subject received some ventilation, and I would suggest that probably it ought to be continued at that rate for this reason. The reports are either in now or will be within a very few days. After we assemble again most of the committees will be discharged from any further committee business and we shall probably sit here morning, noon and night; in which case I should not think three dollars was too high a compensation. If we hold evening sessions it would not be too high.

To test the sense of the Convention, I move to strike out "two" and insert "three."

The question was taken and the motion was rejected; and the question recurring on the resolution as offered, it was agreed to.

MR. VAN WINKLE. If this report—

MR. BROWN of Kanawha (interrupting). I am instructed by the Committee on the Judiciary to tender the report of that committee this morning, and will ask that it be laid on the table and printed.

Following is the report as submitted and printed:

Report of the Committee on the Judiciary Department.

The Committee on the Judiciary Department, having had the matter referred to them, under consideration beg leave to make the following report:

1. There shall be a Supreme Court of Appeals and circuit courts. The jurisdiction of these courts, and of the judges thereof, except so far as the same is conferred by this Constitution, shall be prescribed by law.

2. The State shall be divided into nine circuits, as follows:

(1.) The counties of Hancock, Brooke, Ohio and Marshall shall constitute the first circuit.

(2.) The counties of Monongalia, Preston, Tucker and Taylor shall constitute the second circuit.

(3.) The counties of Marion, Harrison and Barbour shall constitute the third circuit.

(4.) The counties of Wetzel, Tyler, Pleasants, Ritchie, Doddridge and Gilmer shall constitute the fourth circuit.

(5.) The counties of Randolph, Upshur, Lewis, Braxton, Webster and Nicholas shall constitute the fifth circuit.

(6.) The counties of Wood, Wirt, Calhoun, Roane, Jackson and Clay shall constitute the sixth circuit.

(7.) The counties of Kanawha, Mason, Putnam and Fayette shall constitute the seventh circuit.

(8.) The counties of Cabell, Wayne, Boone, Logan, Wyoming and Raleigh shall constitute the eighth circuit.

(9.) The counties of Pocahontas, Greenbrier, Monroe, Mercer and McDowell shall constitute the ninth circuit.

(10.) And in the event that the counties of Pendleton, Hardy, Hampshire and Morgan become a part of the State, then they shall constitute another circuit, to be called the tenth circuit.

(11.) And in the event that the counties of Frederick, Berkeley and Jefferson become a part of the State, then they shall constitute another circuit, to be called the eleventh circuit.

3. The legislature may, from time to time, re-arrange the said circuits; and after the expiration of five years from the time when this Constitution shall go into operation and thereafter, at periods of ten years, may increase or diminish the number of circuits or the number of courts in a year, as necessity may require.

Circuit Courts

4. For each circuit a judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by this Constitution. He shall, at the time of his election, be, at least, thirty-five years of age. During his continuance in office, he shall reside in the circuit of which he is judge.

5. A circuit court shall be held at least four times a year, unless otherwise provided by law, made in pursuance of section 3, by the judge of each circuit, in every county wherein a circuit court is now, or may hereafter be, established. But the judges may be required or authorized to hold the courts of their respective circuits alternately, and a judge of one circuit to hold a court in any other circuit.

Supreme Court of Appeals

6. The Supreme Court of Appeals shall consist of three judges any two of whom shall be a quorum. They shall be elected by the voters of the State, and shall, at the time of their election, be at least, thirty-five years of age. They shall hold their offices for

the term of twelve years, unless sooner removed in the manner prescribed by this Constitution.

7. The Supreme Court of Appeals shall have appellate jurisdiction only, except in cases of *habeas corpus, mandamus* and *prohibition.* It shall have no jurisdiction in civil cases when the matter in controversy, exclusive of costs, is less in value or amount than two hundred dollars, except in controversies concerning the title or boundaries of land, the probate of wills, the apportionment or qualification of a personal representative, guardian, committee, or curator; or, concerning a mill, road, way, ferry, or landing, or the right of a corporation or a county to levy tolls or taxes; and except in cases of *habeas corpus, mandamus* and *prohibition,* and cases involving freedom, or the constitutionality of a law.

8. When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, every point made and distinctly stated in writing in the cause and fairly arising upon the record of the case, shall be considered and decided, and the reasons therefor shall be stated in writing and preserved with the records of the case.

9. Special courts of appeals, to consist of three judges may be formed of the judges of the Supreme Court of Appeals, and of the circuit courts, or any of them, to try any case, or cases, which may come before the Supreme Court of Appeals, in respect to which any of the judges of said court may be so situated as to make it improper for him to sit on the hearing thereof.

10. Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office. The salary of a judge of the Supreme Court of Appeals, shall not be less than two thousand and five hundred dollars, and that of judge of a circuit court, not less than two thousand dollars per annum, and each shall receive a reasonable allowance for necessary travel.

11. No judge, during his term of service, shall hold any other office, appointment, or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he, during such term be eligible to any political office.

12. No election of judge shall be held within thirty days of the time of holding of elections of president and vice-president of the United States, or of governor, or lieutenant-governor, or of attorney general, or of members of Congress, or of the legislature.

13. Judges may be removed from office, by a concurrent vote of both houses of the legislature; but a majority of all the members elected to each house, must concur in such vote; and the cause of removal shall be entered on the journal of each house. The judge against whom the legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged

for his removal, at least twenty days before the day on which either house of the legislature shall act thereon.

14. The officers of the Supreme Court of Appeals, shall be appointed by said court, or, by the judges thereof in vacation. Their duties, compensation, and tenure of office, shall be prescribed by law.

15. The voters of each county, in which a circuit court is held, shall elect a clerk of said court, and an attorney for the State. The term of office of the clerk shall be eight years, and that of the attorney for the State, four years. The duties and compensation of these officers, and the mode of removing them from office, shall be prescribed by law; and when a vacancy shall occur in said offices, the judge of the court held in the county when it occurs, shall appoint a clerk, or attorney for the State, (as the case may be) *pro tempore,* who shall discharge the duties of the office until the vacancy is filled. In any case, or matter arising, in respect to which either the said clerk, or attorney for the State, shall be so situated as to make it improper for him to act as such, the said court shall appoint a suitable person to act in his place.

16. At every election of a governor, an attorney general shall be elected by the voters of the State for the term of four years. He shall be commissioned by the governor, shall perform such duties and receive such compensation as may be prescribed by law, and be removable in the same manner prescribed for the removal of judges.

17. Judges, and all other officers whether elected or appointed, shall continue to discharge the duties of their respective offices after their terms of office have expired, until their successors are qualified.

18. Justices of the peace shall only have jurisdiction of actions of debt, debtinue and trover, and then only where the amount sued for does not exceed fifty dollars, exclusive of interest and costs. They shall be conservators of the peace in their respective counties, have authority to take relinquishments of dower, acknowledgments of deeds and other writings, administer oaths and discharge all other duties appertaining to their office.

JAMES H. BROWN, Chairman.

1.	Hancock Brooke Ohio Marshall		44,999
2.	Monongalia	12,907	
	Preston	13,183	
	Tucker	1,396	
	Taylor	7,300	34,786

3.	Marion	12,656	
	Harrison	13,165	
	Barbour	8,722	34,543
4.	Wetzel	6,694	
	Tyler	6,488	
	Pleasants	2,926	
	Ritchie	6,809	
	Doddridge	5,186	
	Gilmer	3,685	31,788
5.	Randolph	4,793	
	Upshur	7,064	
	Lewis	7,736	
	Braxton	4,885	
	Webster	1,552	
	Nicholas	4,470	30,500
6.	Wood	10,791	
	Wirt	3,720	
	Calhoun	2,492	
	Roane	5,309	
	Jackson	8,240	
	Clay	1,761	32,313
7.	Kanawha	13,787	
	Mason	8,752	
	Putnam	5,708	
	Fayette	5,719	33,966
8.	Cabell	7,691	
	Wayne	6,604	
	Boone	4,681	
	Logan	4,789	
	Wyoming	2,797	
	Raleigh	3,291	29,853
9.	Pocahontas	3,686	
	Greenbrier	10,499	
	Monroe	9,526	
	Mercer	6,428	
	McDowell	1,535	31,674
10.	Pendleton Hardy Hampshire Morgan		30,488
11.	Frederick Berkeley Jefferson		33,780

MR. LAMB. Mr. President. If there is nothing further for the Convention to consider, the subject under consideration at the time of adjournment last evening was the motion of the gentleman from Wood to strike out of the second paragraph of the twelfth section of the report of the Committee on the Legislative Department the words "any salaried officer of a banking corporation or company." It is not necessary I suppose to make a motion to call that up.

THE PRESIDENT. That was the motion before the Convention. The question is on striking out.

MR. LAMB. Mr. President, I have already indicated my views in regard to that matter. I think there is no impropriety in suffering the words to remain. When our houses are on fire, it is very proper for cashiers and bank officers, and all of them to turn out and put out the fire; but in ordinary cases they had better attend to their own business.

MR. BATTELLE. Mr. President, I should have preferred to say what I have to say on this particular clause upon the clause that was stricken out last night but that, possibly, propriety would call upon me at that time to be silent. I believe I will say, however, sir, that I am most heartily in favor of striking out both clauses; and the reasons in reference to one of them were so very forcibly given last night that I need not, perhaps, repeat them this morning. It may be very likely, Mr. President, that in the course of things I should never visit your dwelling or enjoy your hospitality, and there need necessarily be no feeling in the case in that event one way or the other. But I should feel that there was occasion of offence were you, on account of no offence, to get up and proclaim before the world that I never should go to your dwelling. I do not believe in this principle of proscription so applied (and so I regard it) to either class of the persons mentioned here. For one, let me say that it is more than likely that I never shall be a candidate for any political office of any sort whatever. I never was; there is no probability that I ever shall be. And especially would it be an occasion of offence, or at least would it operate proscriptively if after my neighbor had precluded me forever from entering his dwelling he should give as a reason for that preclusion that so elevated and pure was my character that it would be injurious for me to go to see him! I wish to say in reference to this form of exclusion that I suppose gentlemen are aware that in more than (perhaps) half the States of this Union no such restriction exists. I have yet to learn that it operates to the injury that was indicated here last evening. The simple point is in this: that as to the question of the propriety of individuals in the classes here named entering or becoming holders of office, as to the proper constitution of the country saying that they shall not, for very nearly analogous reasons I am opposed—

THE PRESIDENT (interrupting). Will the gentleman give way one moment. The Chair would not wish in any way to restrict the gentleman but will call to his attention a point of order and remark that at some time his purpose could be effected by way of explanation; some gentleman move that he be allowed to explain his vote, which would allow him to pass over the whole ground.

MR. BATTELLE. I accept the suggestion of the Chair, and am aware that my remarks do not apply in strictness to the clause now under consideration though I was on the eve of passing to it.

MR. LAMB. It is obviously proper the gentleman should be allowed to proceed, by unanimous consent of the Convention.

MR. BATTELLE. I have said on that point all I wish to say, except perhaps this additional remark that I wish here now, while entertaining the views I do, to disclaim attributing, either directly or indirectly any but the purest and highest motives to the gentlemen who are disposed to take a different view from what I do. And I wish further to remark in reference to the particular clause now under consideration that I am opposed to this restriction very much on the same ground as my opposition rests to the other restriction. Salaried officers of banking companies are citizens of this Commonwealth. As far as I know, they are honorable citizens and I must hear some reason advanced more than I have yet heard indicated why they are to be restricted from the privilege of holding office should their neighbors see fit to elect them to that office. If it be so, sir, that there are instrumentalities employed by salaried officers of banks—if there are corrupt agencies employed by them which render their membership in either house of the legislature dangerous to the liberties of the people—it seems to me that that is a reason why we should abolish banks altogether; do away with such corrupt institutions. But until I hear some further reasons than have yet been indicated why this restriction should be retained, I must favor its being stricken out and the people themselves left the liberty of choice in reference to this matter. If they ask a bank officer to represent them in the legislature of Virginia, they will say so, and if they do not, they will say so.

MR. BROWN of Kanawha. It seems to me that gentlemen in their opposition to this clause standing in this Constitution predicate it on personal considerations rather than high public policy; and I have been astonished to find that gentlemen seem to wholly fail to discriminate between any personal considerations of any individuals or class of individuals and the high grounds of public policy upon which in framing a constitution it ought to be based. Now, sir, the gentleman tells us that he fails to see any reason why any officer who is a highly honorable and intelligent gentleman, who is receiving a stipulated salary at the hands of a corporation should not be a member of the legislature that is to pass on laws that is to give to that identical corporation peculiar privileges and which is over all the rest of the community; and that corporation, too, one that has in its hands and is emphatically the money power of the State; which wields a power that neither free government nor monarchies have ever yet been able successfully to resist. Now, sir, it is known as a fact in this State that let banks combine with their officers and influence, and you cannot counteract anything they may attempt because of the power that they wield all over the community.

MR. PAXTON. I would inquire if the banks could not wield that influence without having their officers in the halls of legislation, just as well as by having them there?

MR. BROWN of Kanawha. They can wield that influence, unequivocally and unquestionably; and they do do it, but not so effectually as if you will give the officer who is engaging and exercising the influence the right to cast a vote. Now the whole tendency is to place the man who is thus situated in a position in which he is not free from bias. In other words, in the language of the law, he is "not a competent witness." Why, sir, upon a matter of general policy, why would you exclude a witness who comes before you the most worthy and honorable man in your community who offered to testify in a matter involving $10.20 between two of his neighbors and who you prove is directly interested to the amount of one cent? Why, sir, if you were to bring George Washington or Nathaniel Macon, a law that has been in force for a thousand years would exclude him from testifying in a case of twenty-five cents if he is interested to the amount of one cent. Would it influence either of the men to misstate the truth? Not at all. But it is from considerations of public policy that you cannot discriminate in this manner and if you once open the door to interested parties to give evidence in every case you cannot tell how long you will have men there that will be honest. It is a matter of public policy and not in derogation of any particular individual. I have as high regard for bank officers as any gentlemen. I have had a good deal of dealing with them and found them the most discreet, intelligent and reliable men. But, at the same time they are not better than other men in other respects. They are men of like passions with ourselves and all mankind and liable to be influenced, and their minds are ever open in the direction of the institutions and interests over which they preside; and unless they are more than mortal they cannot free themselves entirely from that bias. Why will you prevent any particular party who is peculiarly interested in any particular way from occupying a position between the man and community in which his bias is to be directed in one particular way? That is the very object: to have parties that are entirely free from bias. And, sir, it is with that view that I opposed the question on yesterday. It seems to me the gentleman in the remarks he submitted this morning delivered them out of order. I suppose I may be allowed to notice this because it was a reply to my remarks of yesterday. The whole argument is predicated on the fact that his mind is influenced by personal or private considerations not to a man but to a class of individuals; that it is intended as a discrimination against them from unworthy causes; that it wholly fails to rise—

MR. BATTELLE. I especially disclaimed any such intention this morning by the remarks I made. I especially, in terms, disclaimed the desire to impute unworthy motives to any gentleman; and I wish to say, further, with reference to this particular branch of the subject now under consideration, so far am I from having any personal interest in the matter that I never had a cent of bank stock in my life and the probabilities are that I never will. I wish the gentleman to accept as true the statement that my course on this question is governed simply and wholly by what I regard a most sacred and most inestimable privilege, one that is fundamental to the very existence of popular rights.

MR. BROWN of Kanawha. I do not question that in the slightest degree; but the objection I made is that the fundamental principle is that this is a discrimination between citizens and not predicated on public policy; that our object is not to injure or intercept or disfranchise citizens in the slightest degree; but it is from considerations that grow out of the very character and situation the parties occupy. That is the view of the gentleman. It seems to me we can arrive at no other conclusion from the fact that he indicates it by the example of the gentleman who does not invite him to his house; and, first, that he is informed he cannot be received as a visitor because of the presumption that he is not worthy to be received, and, second, by the presumption that he is too high and honorable and too holy to be received; and that in either event it is a discrimination to the prejudice of the party. Now, that is not the object at all. The object is a discrimination for the security of the people, in which these very parties are themselves equally interested with all the rest; because I hold that which guarantees the liberties of the people secures every man whether he be minister or any other officer. There is no distinction. I had not supposed that any gentleman would ever—I profess myself incapable of supposing, that any man would be actuated by a motive that in our course here we were influenced by any personal considerations either for or against any person. I could not bring my mind to the conception of it. I stand here to represent the people whose interests I regard as at stake and to discharge my duty for their welfare and to discharge my duty in laying the foundations of a government; and I intend to do that, sir, fearlessly, conscientiously, firmly and boldly at all hazards, uninfluenced and unbiased by either threats or favors one way or the other. Entertaining the views I do, I must confess that if my father himself were in the ministry I would stand here and vote for that restriction, for the very reason that it was no injury or disrespect to him but was laying strong the foundations of popular liberty and he with the rest would participate in the glorious blessing thus secured. If there is no reason that would warrant us to discriminate against salaried officers, officers of a particular class of corporations, which, unlike all other corporations, banking and monied corporations, wield the power of the State—if there is no reason for discriminating against them and excluding them from the legislative halls, which legislature is to secure to them the blessings they enjoy—why do you exclude, or propose to exclude, persons holding an office of profit under the State or the United States? I can see no reason for excluding them as potent as the influence of a salaried officer of a corporation under these circumstances. Why will you propose to exclude attorneys for the State from either branch of the legislature? Because they represent the government in the prosecution of violations of the laws of the land, with nothing on earth to bias them one way or the other in the action of the government. No such motive can arise to them as would in the case of these gentlemen who are to exercise peculiar privileges granted to them by this very legislature; and which when they enter in every contest with the people, having the money power at their back its officers become utterly irresistible and can ride over the people rough-shod. But, sir, the history of the country shows, in the case of the Bank of the United States, and other moneyed corporations, how powerful they were to control national affairs whenever they choose to enter the lists in the elections. You may exhibit it on a smaller scale; but it is no less effectual in the accomplishment of its ends whenever you hold out inducements to undertake it. We have seen the dissolution of this Union because by our laws heretofore they have been excluded. The only influences that have been exerted by the banks in this Commonwealth have been that indirect influence alluded to by the gentleman from Ohio, against which there is no remedy but in the integrity and resolution of the people. I do not wish to break down that security. I maintain that striking out this restriction has a tendency to break it down. It is, sir, weakening the pillars of the republican fabric and exposing the people who must choose between the few candidates who present themselves, and hazard all things in the cast of the die. I hope, therefore, that this restriction will not be stricken out.

MR. VAN WINKLE. Mr. President, I think the gentleman who has just taken his seat is very far behind the age; that if we follow his lead we will be going back gradually to all the old fogy principles that the last fifty years has been employed in getting rid of. The idea that grown up men with all their faculties about them and who, unlike puppies, were born with their eyes open, are under the necessity of going to the legislature to protect them against every little thing that may arise in the course of their life and experience! Why, sir, in old times there was a law on the statute books of England prescribing how long people would wear their shoes; that they should not wear long shoes; that they not have but so many dishes on their tables at dinner—and all this class of laws called "sumptuary"—all proceeding on the assumption that people did not know their own business. Now, sir, before any attempt is made to exclude any class of citizens from the exercise of these fundamental rights sacred to all the citizens of the State, there ought to be extraordinarily strong and stringent reasons for doing it. You are proposing nothing less than to deprive a class of citizens of a right which by a provision already adopted here is guaranteed to every citizen of the Commonwealth. Now, sir, if an exception is to be made of this class, something more than the mere apprehension that they may do something wrong ought to be shown. It ought to be shown that they will necessarily do wrong before you can justify it. We are here to make a constitution in which, as I trust, the principles of free government, the principles of the equality of all citizens before the laws, ought to be maintained. And here on this ground of common right and equality, this argument of "high public policy" —which may mean anything or mean nothing as you please—may be applied to everything whatever—is to come up and stand between a very respectable class of citizens and a right that is sacred to all others! Now, sir, there is a principle in this thing, a principle that I trust that this Convention by votes given here, has already shown that they are not inclined to sustain. The gentleman says that the banks have already done such things! I have been a pretty attentive observer of the history of this State since I have been in it, and I have had occasion to know pretty much what the banks were doing, and yet my recollection fails to serve me with an instance where they have ever attempted even to exercise any such over reaching of legislation. I remember that there was in Richmond a president of a bank by the name of Brockenbrough; and I remember he cut a very wide swarth and exercised considerable influence in legislation. But I also remember that he was a very strong party man and that a part of his exertion was to run these northwestern banks. I remember that distinctly; to deprive these northwestern banks of their privileges and equal rights. And I think, sir, at that time the citizens of this section of the state had they appreciated what was about being done, would have been glad to have been represented there and to have stood up for their banks against these eastern banks. And that is where this whole talk about the danger of banks has come from. It is an attempt to aggrandize the two or three banks in the city of Richmond that has given any color to remarks of this kind. And I will tell you how he was stopped. Two successive sessions, the delegates from my county had to fight this battle in defense of these northwestern banks; and the way they stopped his proceedings both sessions was to offer a resolution that a committee of investigation on the affairs of the Bank of Virginia be appointed! Afterwards it was discovered that there had been a considerable defalcation in the State Bank of Virginia. Now, sir, there was a time when bank officers would have been very serviceable to this part of the State. An attempt was made to ruin, or to render much less useful to the community, the banks in this part of the State.

Now, sir, I am reminded by a proposition I offered yesterday that there may be a much worse class in the community than bank officers—a class, sir, which I know has exercised a very evil and unfavorable influence on the legislation of the State. I mean the speculators. When this law in reference to the sale of land, which it is attempted to renew by the proposition I have submitted here —and which we attempted to renew in the convention of 1850— but when those laws were in operation, when they had got to be well understood that they gave a good title, lands were bringing fair prices and titles were becoming settled. In the opinion of every intelligent citizen it was thought we had then what we wanted; we were getting our land titles settled, the lack of which had hindered immigration and the growth of the country through the operations of that iniquitous land office. I will show it is iniquitous when that question comes up here. But, sir, if you want to exclude a class, there is evidence that you had better try the land speculators—a far more formidable and injurious body than those that are hit at in this provision. But, sir, unless you will show me that land speculators will necessarily exercise their influence contrary to the interests of the people—that it is not simply because bad men could have got into that business but because there is something in the business itself which necessarily works to the injury of the people. I will not vote to cut off even them. The people will get their eyes open after a while. They will see what is going on. They will know whom to elect to the legislature. Sir, it is the bulwark and defense of our free institutions that these who represent us in the legislative bodies must come back to the people for indorsement; and if their conduct is inimical to the people they will perceive it and turn them out.

"Public policy!" What is Mr. Stuart's argument for taking away the right of voting from one-half the citizens of the Commonwealth? Public policy, and nothing else. Public policy. The prosperity of the state would be built up sooner by these outrageous abominable discriminations between citizens! That is the argument, sir, that Mr. Stuart recently made on the floor of the Richmond convention. I am surprised that it should be introduced here. And here we have the gentleman giving us as an illustration the other provisions of this same section excluding state officers, those who are in the pay of the State from the legislature—as if there were anything at all analogous in the two cases. Sir, we have a section already passed providing that the legislature, the executive and the judiciary shall be kept separate. And they may, I suppose be excluded under that, and are. If they are really pertaining to the executive department of the State, they cannot sit in the legislature. And why, sir? We are bound to carry on the principle embodied in that article that these departments shall be kept separate and give each branch the power to protect itself against the others. We forbid encroachments by one branch against another. We have said—and cannot alter, I believe—that no person belonging to one of these departments of government should hold any office under another; and that would be sufficient, I apprehend to exclude these salaried officers, but for greater safety it is put in here. So the presidents of the United States have a veto power; and the true interpretation of that is that they might protect their department against encroachment from the others. That may be justified on broad and general principles of government on this very principle of keeping separate the different departments of government. We simply say to each department, confine yourself to your proper functions and do not meddle with those of the others. There is a constant tendency to do so, and we must provide against it.

I trust, Mr. President, that we, in framing this Constitution are to be governed by principle; that we are not constantly to be seeking out exceptional provisions; because if we do, we may fill the Constitution with them; we may point out everywheres where somebody can do mischief. If by passing a law and making a regulation you could prevent crime and sin and all that sort of thing, go ahead and do it; but you cannot. You cannot by any regulation you can make prevent bad men getting into the departments of your government. You cannot by making laws stop the commission of crime. You can punish it and to a certain extent deter others; but you cannot prevent it. Nor can you guard against every apprehended abuse of these powers. Our grand remedy and safeguard is that public servants must come back to the people for endorsement and that at short and stated periods. We have no officers for life, and we want none. They must give an account of their stewardship. And then, we the constituents, the people, being grown up men, with all our faculties about us, capable of discriminating between men and knowing when a man does right and when he does wrong, are capable of saying whether we will send that man back or not. Now I would ask the utility of such a thing? What is it you guard against? We have, sir, in the whole of this new State probably some six banks or branches. Say we had more—suppose we had a dozen, which we have not; and suppose (which will never happen in the world) that each one of these banks should succeed in sending one man to the legislature; and when he gets there, what does he do? Why, sir, they do not make a majority; they do not begin to; and what power can they exercise? Are we afraid of these men, whom the gentleman admits to be among our best and worthiest citizens, will go there and resort to the worst crime in the category in reference to the institutions of the State, to the crime of bribery? Now, sir, that is the imputation. And now supposing that each of the dozen banks had sent its officer, do gentlemen suppose from what they know of any class of their fellow citizens, not this which has been represented as amongst the best, but if you have sent twelve men from any profession whatever to the legislature, that they would get to be that reckless that they would descend to the crime of bribery. Why, sir, here we are protecting ourselves against an army of straw men, setting up defences, building fortifications with walls nine feet thick and as many high, planting cannon—Dahlgren guns—and all that sort of thing—and here comes a man of straw to take us! Even allow that these men should be corrupt—allow that they will be necessarily corrupt—and the whole thing sinks into insignificance, because there is but one or two of them there or likely to be.

Again, as the gentleman from Ohio (Mr. Paxton) stated, this influence, if it is to be influenced by the banks—if an improper influence is to be exercised, it does not need that they should be represented in the legislature. If the members of the legislature are open to bribery, it can be, and will be, done behind the door. We will never see the money pass. And, therefore, as I have already said, we are providing against an evil that can never have any magnitude, not one that is worthy the deliberations of this assembly for twenty minutes. Take all its possible consequences, sir, and I say it is hardly worth providing against. Nor would this be an effectual provision against it, for the bribery and corruption would still go on if there was not a bank officer in the legislature. And I do not know, sir, but if the Convention failed to strike this out, they might impose on me a very disagreeable necessity. I might be restrained, if this clause is retained, to move the expulsion of the gentleman on my left (referring to Mr. Lamb, of the Northwestern Bank), because I think if bank officers are not good enough to be members of the legislature, they are not good enough to be members of this body.

Chair occupied by Mr. Hall of Marion.

MR. STEVENSON of Wood. I wish to make a very few remarks, sir, in opposition (?) to striking out these few words. It seems to me that one objection to this kind of provision, to inserting them in the constitution, is that you make a discrimination against a particular class. While the same discrimination it is urged, on the score of public policy, should be made against many other classes, and could be with the same kind of argument. Now, sir, we have insurance companies—and should have more of them—who have special interests to attend to; who have special privileges guaranteed to them. Why not exclude the salaried officers of these companies? Are they not just as likely to effect their purposes in the legislature as the others? We have railroad officers; we have railroad companies, and we will have more of them in the State. These men—these companies—have special privileges guaranteed to them; and they can exert as much and more influence, probably, than any other class of men in the legislature. Now, sir, if we are to discriminate against the officers of a particular institution, why not discriminate against all of these likely to effect their purposes in the same way? So I might go on with any other companies that are incorporated or that have special privileges within the limits of the State; but it does not stop there. The same line of argument will apply to manufacturing companies.

MR. CARSKADON. I think this does not cover any incorporation.

Several members expressed dissent.

MR. STEVENSON of Wood. It applies exclusively to salaried officers of corporations or private banks. It would apply with just as much force to large manufacturing companies; because I take it for granted that these banks, incorporated companies, are instituted for a public benefit, because the legislature have thought they were a public necessity. I take it for granted that is one condition of their existence; and public or private manufactures are just as essential to the public welfare; and you might with just as much reason exclude a man who has a large capital in a private manufacturing enterprise as to exclude these men, because they can enter the legislature with their money, and friends and they can carry through special laws for their special protection just as easily as the other classes of men. And so, sir, I could apply the same argument to almost any class of men in the State or any part of the State, with the same force at least as far as these men were capable of wielding an influence over the law making power.

But, sir, there is another consideration, and it seems to me it would be safe if there were no other, that you cannot make a provision of that kind operative. It would be a dead letter. Now, sir, if a man was a salaried officer in any of these institutions specified here and knew he would not be eligible if elected, it is very easy for him to resign and carry his measures, and go back and be reinstated in his position. I think, sir, taking every view of the case, that position should be stricken out.

MR. PARKER. I certainly, Mr. President, agree with the gentleman last up. The great principle, as I understand, Mr. President, which lies at the bottom is that all that are qualified voters in this country (with some few exceptions, for good reasons) shall be eligible to office. That is the general principle that runs through the whole country; that is, that all those that are qualified to exercise the franchise shall also be qualified to receive the office that that franchise can bestow. There are instances where it requires a certain length of residence and acquaintance with the peculiar locality or system of laws, as it does in this case. With that view a residence in this State of some five years for governor, for judges and for some other officers is required. But as a general thing the qualifications, and the right to receive an office is coextensive with the right of voting. Now, our new State, as it strikes me, in looking forward, we are to hope at least, that it is to have developed in it the various large interests that are encouraged in other prosperous States around us. The great farming interest, the mining interest, the manufacturing interest, the railroad interest: all these great interests when they are developed and come up in prosperity, are, I hope and trust, to build us up into a great State. Banks are to come up as one of them. In every State in prosperity and magnitude banks come up hand in hand with the others, in fact the hand-maid of every other great interest. They are inseparable. Well, now, all these great interests must have their agents, their employes. Are we to say that because a man happens to be an employee or agent of one of these different institutions, they shall all be forever ineligible, disqualified to fill any office in the legislature—have any participation whatever in making the laws? That is, as members of the legislature? Well, now, it seems to me that if we begin to exclude an agent of one of these branches of business, we cannot tell where to stop. Certainly you take the banking system throughout the country and the gentlemen connected with it are as intelligent as any you will find; no man stands higher in a moral point of view than the gentlemen connected with banks. Well, now, I am unable to see any reason why we should exclude the agents or employees of banks and at the same time retain the agents and employees of other branches of the industry of the State. They have something to do with money, it is objected; but if we are to have a people in our new State that are controlled by bribery, and controlled by some five or six banks—if I believed that was all we have in the State, why then I think we had better stop. If some half dozen banks are going to take possession of the legislature representing the body of the people—if that is the character of our people, then I think we had better stop, because if the agents of the banks do not carry them away somebody else will. It seems to me therefore, we ought not to put a disability of this kind on any class of persons, unless in cases where a person is tainted with crime or has been unfaithful in any public office. The next clause here is where he has not paid up. I say exclude him until he does pay up. If he holds a public trust let him be true to it. If he defaults, make him pay before we put him in again. I shall, therefore, feel constrained, as I did yesterday in reference to the clause which disqualified another class of our fellow citizens, to vote against this. I hold unless they are tainted with crime, whoever is a qualified voter, if his business is honest and useful, let him stand on an equal footing with us all. The people will take care of him.

MR. POMEROY. Mr. President, I will offer a very few remarks. I concur very fully in what has been said by the gentlemen that have preceded me in this subject. The reason that I am in favor of striking this out is that I am not in favor of proscribing any one class of our citizens. Besides, as has been very well remarked, any provision that is not practical in its workings is no use and ought never to be in the Constitution. You could not make this practical in its workings. It would do no good whatever. The monied influence of the banks would still be exercised—if they do exercise this pernicious influence, to which allusion has been made. But, in endeavoring to form a constitution for the new State, I think it is wise to look at the constitutions of the States already in existence; and how many of these have any provision of this kind? I have not had time to look over them all, but here I see what is the provision in the State of Pennsylvania:

"No member of the legislature shall receive any civil appointment within the State or to the senate of the United States from the governor, the governor and senate, or from the legislature during the term for which he shall have been elected; and all such appointments, and all votes given for any such member or officer or appointment shall be void, etc."

But there is no provision whatever of the kind that we propose here. The great State of New York has very nearly the same provision:

"No senator or representative shall during the time for which he shall have been elected be appointed to any civil office under this Commonwealth which shall have been created or the emolument of which shall have been increased during such time; and no member of Congress or other person holding such office, except an attorney-at-law, shall be a member of either house during his continuance in such office."

Well, now, it is said that great evils will arise. Why have they not arisen here? Why have these states gone on in their onward career of prosperity? Why have they flourished so under the legislation they have had? And why, when amending their constitutions a few years ago, did they not make this provision? There is not I believe a single state whose constitution contains a provision of this kind except the old State of Virginia. And are we so tenacious to follow the example of that state as to put in this provision? Look at the light the people have received on this subject from year to year. I find in Maryland they do not put in any provision of this kind. They make no such provision. They do not exclude certain classes. Here is all that they say:

"No person shall be a senator or representative who at the time of his election is not a citizen of the United States, nor any one who has not been for one year next preceding his election an inhabitant of the county or district whence he may be chosen. Senators and representatives shall be at least twenty-one years of age."

No restriction put upon them at all. Whenever they are qualified voters, the people have the privilege of voting for them. They are eligible to office as soon as they become voters. What influence have these banks ever exerted in any state? Look at Rhode Island, one of the most prosperous states in the Union. It is a remarkable fact that the city of Providence has somewhere between eighty and ninety banks at the present time. They have more banks than they have school houses. Yet there is no clause in their constitution preventing these men from going into the legislature at all. We never heard of any evil resulting from it. I do not suppose many of these men will be in our legislature; and if they do, they are just as safe men as any other class of men. Besides, will not the people correct all these evils? If a man is unfaithful will the people return him? Will they do it if they do not believe he is a trustworthy man? If their confidence is misplaced, they can rectify it. As has been well said, there are many institutions as dangerous as banking institutions. I go against this principle of excluding certain persons, or saying that they must bear certain burthens and must be excluded from certain privileges that belong to other men. I believe in making it free to the people, if you want to make this a prosperous state. Let the people say who their public servants shall be. Let them by their own reflection on the subject decide who are the proper men to represent them in the halls of legislation. I am not going to speak of the other clause that was stricken out; but it is salaried officers of banks that we are now striking. I am decidedly in favor of striking out upon the great principle that we have no right to exclude these men any more than any other class. Besides, if you will examine every constitution of the thirty-four states there is no provision except in our constitution of Virginia like that proposed here. Well, does the history of Virginia show that she has outstripped all the other states in a career of prosperity? Has her legislation been more pure than that of any other legislature under the canopy of heaven? If so, I wonder why it is that there should be such a general desire that Richmond should be burned and salt sown on the ground where it stands? A desire to obliterate the city that has been so pure! I will venture to say it was not the banks that made the impurity; neither money banks nor clay banks. It may have been impure men made out of clay!

MR. DERING. I do not rise, sir, with the expectation of adding any arguments to the side of the question which I shall take, or addressing any considerations that will be as cogent and pertinent to the side of the question which I shall advocate as the gentleman from Kanawha has done. I merely rise, to say, sir, that I shall oppose this amendment. This whole clause, sir, commends itself to my favorable consideration and I should have been happy had it been the pleasure of the Convention to retain it in its original form. But, sir, I bow with cheerfulness to the decision of the question in reference to striking out the first clause. But, sir, lest they should think I was partial and that I desire to admit the salaried officers of banking institutions and to exclude the clergy from the legislature, I desire to say that I wish to see the salaried officers of banking institutions also excluded from the legislatures of our State. Yesterday evening by my vote I endeavored to protect the cloth from the contaminating influences of the legislature. This morning by my vote I desire to protect the legislature from the monied influences of the country. So far as bank officers are concerned, as a class, there are no men that are more respectable or stand higher in the community for integrity than the banking officers of the country. But, sir, money is power; and if you connect the monied power of the country with the legislative power of the country you have a great power that will override everything else and make everything else subservient to it. I am opposed to this alliance of the banking power and the legislative power of the country. I go for keeping them separate and distinct; and am opposed to the striking out of this clause. Why, sir, the gentleman from Kanawha alluded to the United States Bank and the influence it exerted and the excitement that it produced throughout the whole country; and the old hero of New Orleans, sir, with a determination and a will that was decisive to down this monster, as he termed it, that was controlling the political destinies of this great country. Sir, if you admit that doctrine this same monied influence within the states will control the political destinies of the states if you will bring the principals into conjunction with the legislature. By admitting salaried officers of the banks to be members of your legislature, you make them accessible to that legislature, you make them a part of it; and it is natural that they should legislate for the benefit of their particular institutions. It is but natural, sir, that they should throw their influence and their votes to protect and maintain the interests of the particular institutions which they represent. They will, sir, in their action conform to the interests of their banks and not to the interests of the community. The banks, sir, created by legislation, are the creatures of law and they ought to be held subject to law; and I would have no influences in the legislative bodies of the country that would interfere with that subordination to law which they should always be kept in. Sir, I protest this morning against the conjunction of these two powers—against this unholy alliance! I protest against it, sir, in the name of the people! I say let the banks move on in their spheres and be subject to the legislative powers of the country, and let the people control their legislature and keep their banks within a proper sphere. Make such enactments as will keep them healthy, protect their monied interests, as it is the duty of the legislature to do and as they will do should they be left untrammeled by the monied interests of the country. Why, sir, suppose our half dozen banks in this State were to endeavor to elect the governor in this commonwealth. Let that governor be favorable to banking institutions; let a great question arise in reference to banks and of the two candidates let one take the side of the banks, the other in opposition, and, sir, which will be elected? You bring a half dozen banks into the field, with all the monied power and influence and they will control, very likely the election of governor. This only would limit the power of money. Give me money enough and I will rule the world. Give these institutions the control of legislation, and they will be able to subject to their influence, and they will control the matter of banks and give it such direction as these bank officers may desire.

I, sir, did not rise for the purpose of making a speech but only of showing that I am an advocate for this whole clause as it stands, and particularly for the third clause.

I shall vote against the amendment.

MR. BATTELLE. I wish to say again in reference to myself that I not only never owned any bank stock but it is almost absolutely certain that I never shall. I never borrowed any money of them; I do not owe them anything and they do not owe me anything. That last part, however, I am a little sorry about. And let me say in reference to my friend from Monongalia that if banks are corrupt let us clear them out; and I am free to say here, for one, that if when the time comes you are opposed to putting on any restrictions in reference to their right of suspension of specie payment, in reference to any question of that sort, if they be needed, additional guarantees, you will find me on hand all the time to vote for them. The question before us, however, is a different one. My opposition to the clause which it is now proposed be stricken out, I will not say is a matter of "high" policy; it is deeper than that. It is with me a matter of high principle; and I intend to go where my principle leads me all the time; and it is the only interest I have in this. I am opposed to these class restrictions; to putting into your fundamental law any provision that will operate to the exclusion of gentlemen who by the concession of everybody are high-minded and honorable men in all the business and social relations of life, having, of course, sir, their frailties as individuals that pertain to us all. But if we are to follow out this principle, why not carry it to its logical conclusion? Why not prohibit the people from electing railroad officers? Why, sir, you have a great railroad which has been represented as the artery through which flows the life-blood of our new State. Why not lay restrictions on them? But dropping the subject of mere corporations, why not restrict all the classes of the community? Here is the farming interest, the fundamental interest in this State, is now and destined so to be. Nearly all the legislation you enact has direct reference to the farming community. It might combine together so as to prohibit, or lessen or minify taxation to such an extent as to bring the wheels of your government to a stop. Why, I say this in reference to the merchants, who according to the credit system that is universally diffused all through the State—the merchants of the country hold the destiny of the people in their hands. Why not say in your fundamental law here that merchants shall not be voted for to represent the people. But we need not stop there, sir. The gentleman on my left remarks "ledger influence." We all know what that means. It is a potential power in the administration and councils of the nation. There is no class of our citizens, sir, against whom it is popular to join in clamor as our fellow citizens of the legal profession, who wield a most potent influence in the destinies of any community in which they reside. I say, sir, it is popular to join in clamor against lawyers; and I am glad of an opportunity here in my place in this body of saying that, for one, from my acquaintance with these gentlemen, I am prepared to say that it is, as a general rule, a very idle clamor, and unworthy of consideration of intelligent gentlemen. We all know, sir, that that profession embraces much learning and intelligence and integrity and worth in our community. And yet there is nothing more popular than to join in denunciation of the legal profession. But, aside from all this, we do know it to be a fact that these gentlemen do wield and can wield a most potent influence in the councils of our State in our legislature. No measure of public policy could pass if the gentlemen of the legal profession saw fit to combine against it, and almost any other measure could pass were they corrupt enough to combine for its passage. Now, because that is a fact—and it cannot be denied—shall we put it in our fundamental law that no lawyer shall be voted for. Shall we yield to what we all conceive to be a mere idle, futile clamor?

And so, by the way, sir, you might go through with all interests and all classes, and, by the way, there would be nobody to represent us in the legislature, because some one of these classes, or the classes all together, might combine to do wrong; and the exclusion of one after another would in the end exhaust the whole material from which representation was to be had.

Now, as I said before, this is not a matter of policy "high" or low, but it is a matter of principle; and so long as I am entrusted with position here, I intend to follow my principle wherever it leads me; and it leads me to this result (as I announced yesterday) of leaving the selection of men to represent them to the people themselves, regarding the right, as I do, as fundamental in the structure of our civil liberties, to select their own public servants and their own public agents. If they approve of this man or that, they will choose him; but if he does not suit their purpose, they will not choose him, and they will act wisely and justly. Let me say, sir, that this is no mere demagoguist sentiment with me. The experience and reflection of months and years of my life lead me—and even the events in the midst of which we are groping our way up to the light lead me—to have an abiding and steadfast confidence in the integrity of the masses of our community in this regard. In our own western Virginia the whole people have led the leaders in this whole movement for loyalty to the integrity of the Union. So long as that is the case, I am willing to abide with them.

MR. HARRISON. Seems to me, sir, the question to be decided upon the motion before us resolves itself into this: How far ought we to go in forming this Constitution, in restraining the natural rights of the people? If I correctly understand the views of the gentleman who has just taken his seat, it is that he has confidence in the people; that if the exercise of all these rights which pertain to them shall be left to themselves they will do it right all the time. It seems to me, sir, if that principle is carried to this extent that we might as well do without any constitution at all; that you will eventually bring us to that thing, because if they will do right all the time there is no need of law to restrain them. But, sir, the remarks of the gentleman from Wood in reference to the land speculators illustrates the principle remarkably well in this. He finds it necessary by experience of the past that some legislation should be had by which the powers and the evils arising from land speculation should be abridged or prevented. Well, now, have not the people for the last seventy years had that power in their hands? Have not they had the right to send such men to the legislature as would abolish the laws that have been injurious to us and they have not exercised it? It has become so deleterious to public interests that gentlemen now think it is necessary for this Convention to interfere and protect the people against this class of persons against whom they have been able to protect themselves. There was another proposition, which has been voted upon already by this house, which seems to me also illustrates the necessity of protecting the people against their own indiscretions. Now, while I have great confidence in the judgment of the people, yet I do not believe that they are not liable to err; that they may not be led away by their passions or prejudices. Why, sir, we voted that a pauper should not have the right to vote. Why? Simply because he has had the misfortune to be so poor he cannot support himself and family. Now, sir, he may have the brightest intellect in the land, the most excellent judgment; he may have served his country well for forty or fifty years; yet, sir, the improvidence of the man, some defect in his financial capacities, has reduced him so low the public has to support him, and that man is not allowed a vote simply on account of his misfortunes.

MR. BATTELLE. Mr. President, permit me to ask the gentleman a question: whether he does not see a reason in the case of a man whose very bread and meat—whose life—comes from the public treasury without rendering any adequate compensation therefor, as a beneficiary of the public funds—a reason for excluding such a person that does not pertain to a citizen who earns his own livelihood and contributes his share to the support of the government?

MR. HARRISON. I am inclined to think the banks live off the public as well as the pauper.

MR. VAN WINKLE. They had better come under the pauper clause then.

MR. HARRISON. I do not know much about banking operations, but I was using the illustration to show that there is a necessity for restraining the action of the people themselves. Now, as has been argued by the gentleman from Kanawha, prudential motives indicate to us that the powers of the banks became so great—their influence over the people—that it is impossible for the people alone to resist them, and it is necessary for us to throw some strong restrictions on their privileges and powers to protect the people against them. The people, sir, is conceded—at least it has been laid down by some great politicians and statesmen that as money will control the world and it does happen somehow or other that banks, being monied institutions do acquire immense influence over the public mind—that by means of the debtor influence—the "ledger" influence—I am not prepared to say, because I am not sufficiently versed in their methods to know from what it does arise. I have always heard that in the legislature of Virginia there has always been complaint of the banks of Virginia; that they have always been endeavoring to limit the powers of the banks, to restrain their action, to restrain them to certain prescribed limits. Well, now, it is true that other corporations must also, perhaps, be considered as having great influence. In answer to that, when the influence of the railroad companies and insurance companies becomes so great as to be oppressive to the rights of the people, then it will be necessary to interfere by legislation to protect ourselves by constitutional provision. It does not happen so at this time. If said railroad interests come in conflict, as they generally do, one would serve to check the other; but the banking influence is always the same; and it is to protect the people against the influence and power of the banks that this provision is put in here, not that particular individuals or members of banking companies are not as upright and honest and capable as other men, but because the experience of the past indicates to us that the power of money is so great that the people are not able to protect themselves against it. It is necessary that provision should be made to this end in the fundamental provisions for government. Believing as I do that this influence has immense power—could have unlimited power—I think it is judicious and wise to put such a restriction in our Constitution.

MR. BROWN of Kanawha. Mr. President, the gentleman from Ohio has instanced several instances in which he seems to indicate a similar reason for the exclusion that would exist in this case. And they are specious; but I really think there is nothing in them. In his allusion to lawyers, he pays the bar a compliment. Well, sir, I shall not undertake to say whether they deserve it or not. I leave them to stand on their own merits, to rise or fall as they may. But that the same reason that would exclude bank officers would exclude the bar, I cannot agree. Now, sir, there is a very marked distinction. Whether the lawyers have the qualifications that are ascribed to them or not, wherever they are they are but a part and parcel of the people. They have no distinctive interest that is not in common with the masses. The distinction is not against bank officers to be excluded while others are admitted but it is bank officers who receive salaries at the time they are exercising the legislative function. Your lawyer is receiving no salary. He is but another individual pursuing his vocation in life just as any other man. There is no peculiar reason to come in his vocation that does not affect all the community that he could legislate for his own benefit to their prejudice, if that is the ground of the exclusion—no motive or inducement to bias him to the prejudice of the masses. His interests are homogeneous with them whether for weal or woe; but it is not the case with the bank officer who receives a salary. He exercises a function and franchise that is a peculiar gift by the legislative power to that corporation and it is a corporation to control the monied interests of the country—the currency of the land—which is the highest interest that controls the bread of every man. Your railroad, turnpike and internal improvement companies have nothing to do with controlling the masses of mankind. They but pursue the "even tenor of their way"—some of them a very rough one, "without money" and some of them "without price"—to make roads for the public good. They have no distinctive interest. They are not money making machines for profit. They are instituted and created for the purpose of the public good, and it is for its interest not theirs. But not so with a bank. A bank is so in the main, but is always governed by those who own and hold the stock for the private benefit of the private owners. The public only derives its incidental benefits as it controls the legalized currency. But we know the currency of a country controls everything in a country. It controls the returns of the farmer, the lawyer, the doctor and every other man, for who can buy his bread without this currency; and this currency comes through the banks. The individual can only get it from these banks by obtaining accommodations at their hands, and the individual or the corporation that controls this influence is almost omnipotent. Now if any gentleman who is a bank officer and desires to go to the legislature let him resign the office that controls the salary that can control his bread and free himself from the peculiar objection that is raised against him. This Constitution does not exclude him. It is not a discrimination against the officer, but against the influence that can hold and command his services against his better judgment and even bias it when he thinks it is right.

Well, sir, there is another gentleman—I believe from Hancock—who instanced by running comparison between Virginia and several other states that have not this provision in their constitutions; and he traces that comparison—I think rather an invidious one, with their prosperity and glory. But does he instance the facts to show that their legislation has not been corrupt, while insinuating that ours has been, and because this provision was in our constitution and was not in theirs, and might have the distinctive features he indicates have been the result of this. It does seem to me from some quarters in this Convention that is almost a mark of degradation, a word of opprobrium, for a man to say or feel that he is a Virginian, or allude to anything that is Virginian. Why, sir, to look to the lights and the past joys of our country it seems to me almost an offence. I must say it reminds me of the old proverb that it is a foul bird that always befouls its own nest. I intend nothing disrespectful; but I desire to say that that which is Virginian commends itself to my approval first and foremost, and I desire to know that it is not best before I repudiate it; and I say take the legislation of Virginia from the first house of burgesses down to the last legislature before the last vote calling the Convention, and it stands comparison with all the legislation of the land or of the world. I defy comparison with any country in the world to the prejudice of this commonwealth. I maintain that take our legislation and the men that have legislated, and all the glorious periods that have gone before in the history of this state, and no Virginian need ever blush by comparison with any state of this Union, or any other Richmond in the world. Then you bring no reproach to my mind when you say, this clause has been in our state constitution for years, compare it with as many as you choose. And I would say to the gentleman from Wood, when he brings up Senator Stuart and his argument, that to answer a question that has nothing to do with this, but an argument that if I remember right he has repeated several times—if he has not a higher regard for Senator Stuart than I have, he would never repeat it again. I wonder if the time has not been when he did not regard the views of Senator Stuart in this way?

MR. VAN WINKLE. Never! Never! I repudiated him in 1851.

MR. BROWN of Kanawha. I am glad to hear it.

MR. VAN WINKLE. I never voted for him and never would.

MR. BROWN of Kanawha. I am glad to hear this from the gentleman. He is with me still. I have never stood up for Senator Stuart; but there are principles of Virginia's—there are men in Virginia, whose name and reputation and advocacy of things stand high in my estimation and I am not to be at all bothered or frightened from the propriety and reason of this thing because Senator Stuart has advocated some measure that is foreign to our feelings and prejudices and opinions of principle or public policy. This principle and public policy, I maintain, require the preservation of this clause. It is not intended to discriminate against individuals but only against those holding a position or a salary at the hands of a corporation that has to ask aid of the body of which its employe is to be a member. And that is a very good reason; does not impute to that integrity than to other men; does not attempt to punish men for crimes they have never committed but only to secure the community against the dangers of temptation. We know that all men are liable to this. Why, sir, gentlemen seem to argue this question as though they were making a constitution for angels. I stand here to make a constitution for men who are in their very natures prone to do evil as the sparks to fly upward; and it is to guard and guarantee the public body that is to control the land against these things that I expect to secure that restriction in this body.

MR. VAN WINKLE. Mr. President, I feel I must claim the right to answer the gentleman so far as he has alluded to me personally especially to what my opinions may have been "out of doors"—which I took the liberty to correct at the time.

MR. BROWN of Kanawha. There was nothing taken to be offensive to the gentleman.

MR. VAN WINKLE. If I am the person who was alluded to as attempting to strike Virginia, the gentleman is entirely mistaken and the Convention will justify me. Why, Mr. President, did I not know—

MR. BROWN of Kanawha. I did not allude to the gentleman. I alluded to the gentleman from Hancock, and not that he said so but that it was an inference I drew from the argument which he made.

MR. VAN WINKLE. Let me set myself right, whoever the gentleman is that was alluded to, I know, sir, that no community of the same size, ancient or modern, produced so many great men in the same time as this commonwealth, no matter where it is. I would be the last man to attempt to injure her reputation. Sir, this is not the first time I have made this remark, but I have constantly made it on every occasion. No man has been prouder of his citizenship in Virginia than I have, although born elsewhere. But we are here for the purpose of setting up a government for ourselves. We have been complaining justly for years that these institutions of Virginia were not adapted to our case in this section of the commonwealth; that the other section has had the power to do what they please. And the gentlemen will remember that for myself that I expressly have relieved them from invidious imputations in regard to what we consider oppressive legislation. I have said that they had adopted their legislation to their own condition, as they naturally would; and their condition being different from ours, that legislation did not suit us.

But, now, sir, in reference to any of these particular provisions, I confess that this matter of excluding cashiers (if my friend Mr. Lamb was not included in the exclusion), I might think of very little consequence as to the mere fact that these gentlemen might be excluded. But, sir, it is because there is a principle involved in it that I have any great interest in the subject. If there was no principle I might think it a hardship to my friend on that side but would let it pass. But when we are here in this early stage of our debates and when the question is one of principle; when as that question of principle may be decided one way or the other it may govern our future action all through this Constitution it becomes even in this case a matter of lasting importance.

And so far, sir, am I to being hostile to Virginia; so far from attributing a disposition to waken popular rights to Virginia exclusively, I had the pleasure of reading here yesterday extracts from the writings of one of the very greatest men that Virginia has produced, (Jefferson) a man who has given a name to a large party in this country; for we have all heard of Jeffersonian Democrats, particularly; and I cite him here in favor of these very popular rights. And, sir, there is no one thing that we complain of as oppressive in all this legislation to which we have been subjected that the true friends of equality of citizenship and the rights of the citizen are disposed to contend for that they will not be justified in contending for by the writings, still extant, of Jefferson, and not only of him but of others who were his cotemporaries—Beverly Tucker and some others. Sir, there have always been differences of opinion in Virginia. In the convention we had Phillip Doddridge, and for a while Mr. Cook, who stood up for these popular rights, for the white basis of representation, at that time. If Virginia precedents are to be cited, if you give me time I will bring you as many precedents from distinguished Virginians in favor of the expansion of popular rights to the almost popular limits, as you can bring of Virginians against it. I do say, sir, that in reference to this subject of popular legislation in Virginia, we are rather going backwards. I think that cannot be contradicted. We have fallen upon evil times and we are seeing the results of it now in the position in which the commonwealth has placed herself. Why, sir, look back to the last four governors, Floyd, Wise, "Billy" Smith and John Letcher. Are these the distinguished men of Virginia to whom I am to bow down and yield my opinions? Not one of them, sir; not one of them! Not one of them has ever done anything that I know of in the course of his life that would lead me to consider him a great man at all upon a par with the elder fathers of the country. And it is they, and such as they, who have controlled the legislation of this state for many years past.

And, sir, I go back to where I started: if we are here for the purpose of reforming this constitution, of making a better constitution than the former one—that is the purpose, I believe for which we are here—I cannot be convinced that a thing is right simply because it is found in the constitution we are here to correct. It is no argument that a provision is found there, when we are here for the purpose of correcting it. We are here with a blank sheet of paper on which we are to write a constitution. We are not to do as was suggested in a resolution offered yesterday, to take the old constitution and patch it here and there and make it do for the present, and then for a few years still going on under this system of which we so much complain as heaping enormous outrages on us under this wretched instrument when applied to our condition—then, sir, we are to go to work and make a constitution. Why not do it now? Why not do this work completely at once? Why not make the best Constitution now that we are capable of making? And why shall we not regard, as suggested by Mr. Jefferson in the extract I read yesterday, that fifty years experience in government was worth more than all the theories that could be written on the subject? We have the light of that experience not only in our sister states but in our own. Doubtless there are many good things in the Virginia Constitution which will be retained in ours; but if we do it will be because they are in themselves good features to be introduced in any constitution and not because they are in that constitution.

Then, sir, to go back to the question before the house, I ask members to vote for this now and test this question: Are you disposed—do you consider yourselves as vested with authority—do you consider that, sitting here to make this Constitution, you have the slightest authority to disfranchise and disqualify any citizen except for crime committed? Why, sir, what was the excuse for the tyrannies of the English "Star Chamber" and the French revolutionary tribune, by which a man without trial or examination was sent to prison or the scaffold? The pretence was not that he had done something but that he might do something. Here it is: these two respectable classes of citizens—among the most respectable, irreproachable in private life as any other—are to be, without trial by judge or jury, punished with the same punishment which we declare shall attach to him who in time of insurrection or invasion refuses to take an oath of allegiance and to come out and manifest his allegiance to the State. But these innocent and irreproachable classes of men are to be punished in advance, not because they have committed anything but lest they might! Sir, the principle is a wrong one. Any principle that looks to punish a man before the offence, is wrong. Any principle that for insufficient cause, for a mere suspicion, for a mere threat, would deprive any citizen of this State of his birthright must be a wrong principle.

MR. BROWN of Kanawha. I would like to ask the gentleman a question with his permission.

MR. VAN WINKLE. Certainly, sir.

MR. BROWN of Kanawha. If the gentleman had a lawsuit involving half that he owned with a banking corporation, I want to ask him whether he would like to have the judge the president of that bank, who received a salary from that corporation, or whether he would move a change of venue in such a case?

MR. VAN WINKLE. Well, sir, if he was an honest man I think I would take him. However, I do not think the case at all a parallel. The judge has to declare the law, as in the facts he may have a secret bias of which he is himself unconscious. If we are to proscribe the judge in such a case, we are to proscribe juries, because there may be a bias unknown to them resting upon their mind. But let me say to the gentleman that even this is old-fogyish now. The tendency of modern jurisprudence, even in England, is not to exclude the witness, not to prevent his being examined, but the jury are to judge as to his credibility. Under the old rule a witness is brought before the court—as he says, General Washington—and having an interest of one cent in the result of the suit he is excluded from giving testimony; but the tendency of modern jurisprudence elsewhere is to let him be examined and let the jury judge how far this interest is influencing his mind; and, of course, if it was General Washington testifying in such a case as cited by the gentleman no jury would be found who supposed it would influence his mind in the slightest degree. Again, sir, in some States of this Union and in England, it is proposed the parties themselves are to be examined. In every suit that comes up the party himself gives his evidence—the defendant and the plaintiff, and the jury are left to judge how far they have been affected in giving their evidence by their private ends. The idea that such things lead to perjury is discarded.

I can only conclude by hoping that gentlemen will consider this a matter of principle; that in voting on this we shall know how they are inclined to regard this great principle of equal rights among citizens. That is the principle for which we contend: that every citizen should be equal before the law; that you should not take from one, unless for crime committed, any right which you give to another citizen. When a man enters into the service of the State—becomes, for instance the auditor of public accounts, makes himself a member of the executive branch of the government, there is a peculiar and recognized propriety why he should not walk into your legislature halls and exercise legislative functions—it being one of the fundamental principles of our government, state and national, that the executive and legislative branches must be kept distinct. If there is any reason of that nature and character, give force to it; but do not act upon any class of your fellow citizens on the supposition or the mere suspicion that they may do wrong. Human nature as the gentleman says, is fallible. I know it and I feel it. I had half a mind to have voted the ministers out yesterday because they tell us of it and make us feel bad sometimes. But, sir, fallible as we are, we know that every human institution is liable to abuse; and that is a corollary which you may draw from our fallibility. We know that every man is liable to abuse any trust or power; and on that ground, sir, even in this case we may well ask ourselves whether this class of citizens are any more liable to abuse it than we ourselves. If any of us is sent to the legislature, we may have no reason that the public can have access to, but we may have private ones hidden away in the recesses of our breasts and act accordingly. Therefore, to say that you can by any human provision correct this fallibility of human nature and make it infallible is more than we are warranted in saying. We cannot do it. We must take men as they are. What they are is a fact, and no fact should be disregarded: But why should we conclude that one class of citizens—and only a class, because they are of a certain profession; they are precisely the same as all our fellow citizens—that that class is more likely to abuse power than any other. We know with our politicians—notwithstanding their way of talking out of doors, judging them by what they say—we know this: After we have elected say to the presidency of the United States, there is a "still small voice" that comes up to him and tells him that he has a conscience; and he feels he has assumed responsibilities about which he could talk lightly during the canvass but which talk he is not disposed to act upon—unless he is, indeed, a bad man, after he comes to have responsibilities of office laid upon him. And so it may be with the class of fellow citizens now proposed to be stricken out. We should have the charity to believe that they, like ourselves, when they have assumed a public trust will be aware that they assume a responsibility for which they are answerable not only to their constituents, not only to the State at large, but answerable to Him who made them. Should we not be willing to believe that under these responsibilities, by their oath of office, unless they are the worst of men, they will act as nearly in accordance with those obligations as the rest of us. Sir, it is unjust and ungenerous to attribute to any man on account of his profession a weaker conscience than we claim to have ourselves.

MR. BROWN of Kanawha. The argument of the gentleman seems predicated on the supposition—

MR. VAN WINKLE. The gentleman has already occupied the floor twice, I believe, Mr. President.

THE PRESIDENT. The gentleman has spoken twice.

MR. BROWN of Kanawha. I only desire a word of explanation in reference to myself.

MR. VAN WINKLE. Well, sir, if this matter has become so narrowed down, I must claim some rights for myself, sir.

MR. BROWN of Kanawha. I only wish to set myself right before the Convention. I hope I have not been understood as complaining at all of any gentleman citing the constitutions, laws and prosperity of other states, comparing them with the constitution and laws of Virginia; but only to say that there seemed to be a reflection at the citation of our constitution and state; and I desire to set myself right. The argument of the gentleman in reply to mine seems to be predicated on that hypothesis. I disclaim any objection to the style of argument or anything of the kind. I have cited other constitutions. I only have to say, sir, that I do not like the feeling that exhibits itself. If I cite from the Constitution of Virginia and if this is to be the subject of reprobation—and I must confess that I have heard on more occasions than one the reference to the fleshpots of Egypt: the "fleshpots" seemed to be connected with a reference to the Constitution of Virginia. Now that does not come agreeably to me. I hold that when I cite that constitution it is as high a record and instrument as any that can be found. I am prepared to attack that constitution at every point from one end to the other; but always with respect and admiration for all its provisions that are admirable; for it has things in that are admirable, and I do not think a reference to them, as I have a right to refer to them, ought to subject me or any one to the invidious and sneering comparisons that gentlemen have seen fit to indulge. That is the only explanation that I desire to make.

MR. HAYMOND. Mr. President, I am for striking out. I desire to say to this Convention that I came here as a liberal man. I came here to assist in forming a liberal constitution. I did not come here, Mr. President, to say that any man or set of men shall not have a voice in this government. Mr. President, I would like to know what banks are for and who they belong to. I have always understood that banks were to loan money to help carry on the trade and commerce of the country. That is the understanding I have always had. Gentlemen say they are not stockholders in our banks. Let us inquire. Sir, we have in western Virginia, about $500,000 stock in the banks. It belongs to us, the people. Therefore I presume that every man here is a stockholder of the bank. The cashier of the bank is only our agent; and are we not willing to trust him in our legislative halls? I have seen the day when a cashier was greatly needed in our legislative halls; for every man who knows any thing about banking knows that a great majority of these men who go to the legislature know nothing about a bank; nor you cannot learn them! The gentleman from Monongalia appears to be alarmed about our banks if the cashiers get into the legislature. I will say to the gentleman that neither he nor his constituents need be alarmed. They shall not be hurt. The banks and cashiers shall be their best friends. I shall vote, Mr. President, for striking out.

The vote being ordered on Mr. Van Winkle's motion to strike out of the second paragraph of the twelfth section the words "any salaried officer of a banking company or corporation," Mr. Brumfield demanded the yeas and nays.

When his name was called,

MR. LAMB said: I shall not vote, of course, on that question.

Mr. Lamb was excused from voting.

The record of the vote was as follows:

YEAS—Brown of Preston, Battelle, Chapman, Caldwell, Cassady, Hansley, Haymond, Hubbs, Hervey, Hagar, Irvine, Lauck, Mahon, Parsons, Powell, Parker, Paxton, Pomeroy, Stevenson of Wood, Stuart of Doddridge, Taylor and Van Winkle—22.

NAYS—Brown of Kanawha, Brumfield, Carskadon, Dering, Dille, Hall of Marion, Harrison, Montague, O'Brien, Sinsel, Simmons, Sheets, Walker, Warder and Wilson—15.

Absent or not voting—Brooks, Dolly, Ruffner, Stewart of Wirt, Soper, Trainer and the President.

So the words were stricken out.

MR. VAN WINKLE. I move that we now adjourn until the seventh of January. I apprehend there will be some business to do and I understand many gentlemen will be accommodated to go in a steamboat tonight. I shall not leave myself. It is not personal to me.

MR. LAMB. I think we had better adopt the amended clause.

MR. VAN WINKLE. I withdraw it to take the vote on the section.

MR. LAMB. I move the clause be adopted.

MR. CALDWELL. In regard to the first part of this clause, I wish to ask whether salaried officers of a state is intended to include all county officers.

MR. LAMB. The language is not "of the State" but "under this State." I take it that is the same expression found in the present constitution. I would take it to include all county officers that hold offices "of profit."

MR. CALDWELL. Then the consideration would be for the Convention to determine whether another clause which follows that in our present constitution, giving authority to justices of the peace to sit in the legislature—

MR. LAMB. If there is any other amendment desired we had better adjourn, perhaps.

MR. CALDWELL. As this discussion can be reached at another stage, after the recess, I will withdraw any amendment.

MR. VAN WINKLE. By an article adopted in another report, it is provided that no justices of the peace are excluded, absolutely.

THE PRESIDENT. The question is now upon the clause as amended.

MR. BROWN of Preston. I move, sir, to strike out "or any attorney for the State"—not for the reasons that were urged for striking out the other clauses but because I believe that officers of this kind are embraced under the first clause of the sentence:

"Nor shall any person holding an office of profit under this State or the United States." They are officers—made so—and they are paid officers. I presume it amounts to nothing more than tautology. That is my understanding of it.

MR. LAMB. That provision is adopted from the present constitution, altering the word "Commonwealth" to "State." It applies only to prosecuting attorneys, of course. The object of the provision was simply to settle a doubt whether an attorney for the Commonwealth was a person holding an office of profit under the State. If he does receive a salary from the State, no doubt he is included in the first clause and the words are entirely unnecessary. I believe that is a fact.

MR. VAN WINKLE. We do not know what the Judiciary Committee are going to do with prosecuting attorneys. If they shall, as now, receive a compensation from the State, they will be excluded under the general provision in this clause. If they do not, why then we do not want to exclude them by these specific words. Unless they are excluded as judicial officers, they are excluded then either way.

MR. LAMB. I suppose it may as well be stricken out by general consent; and make the clause read merely, then:

"Nor shall any person holding an office of profit under this State or the United States, be a member of either branch of the legislature."

MR. VAN WINKLE. Does a committee make an alteration in its own report?

THE PRESIDENT. I doubt the power of the committee to make an alteration when it is before the house.

The question was taken on the motion to strike out and it was agreed to.

MR. LAMB. I move the adoption of the paragraph as amended.

The motion was agreed to.

MR. VAN WINKLE. I will now, sir, unless a gentleman wants to offer a proposition, or introduce some matter-of-course business, or make any remarks, move that we adjourn until the seventh of January at ten o'clock.

THE PRESIDENT. It is necessary that some understanding may be had with reference to reports printing. It would be well if we had all the reports of the committees.

MR. VAN WINKLE. There are some members so far off that the reports would hardly reach them before they would have to come back; and I suppose the mails would be slower. I was going to suggest that gentlemen desiring to have these papers sent to them should indicate their wishes to the clerk or sergeant-at-arms.

The Convention then adjourned to January 7, 1862, at 10:00 A. M.

XXII. TUESDAY, JANUARY 7, 1862.

The Convention reassembled at 10:00 A. M. and was called to order by Mr. Lamb, who read the following dispatch:

"Parkersburg, Jan'y 6, 1862.

"Daniel Lamb,
Wheeling, Va.

I have been delayed on the river. Act in my place as President, tomorrow.

JOHN HALL."

Mr. Lamb took the Chair.

After prayer by Rev. Jos. S. Pomeroy, a member, and the reading of the minutes of last day's session, the presiding officer called attention to some errors in the printed journal of December 13, and December 20, (which do not appear in this report) and they were corrected.

MR. VAN WINKLE. I hold in my hand what purports to be credentials of a gentleman accredited here from Calhoun county. It is, short, sets forth the facts, and supports it by affidavit, addressed to the Convention:

"To the Honorable, the Convention of delegates of the people of western Virginia, assembled in the City of Wheeling under and in pursuance of the ordinance passed August 20, 1861, 'to provide for the formation of out of a portion of the territory of this State,'

"The humble memorial of the undersigned qualified voters in and for the county of Calhoun respectfully represent that they were unable to hold an election for a delegate to your Convention on the fourth Thursday in October, 1861, as they desired to do and would have done but for the following reasons: there is neither sheriff, clerk or justice in said county, and no court has been held in said county since June last; all the county officers are or have been engaged in the rebellion, so that there was no one to hold an election.

"Your memorialists desiring to have their said county of Calhoun represented in your Convention, respectfully appoint and recommend to a seat in that body our fellow citizen, Job Robinson, Esq., who has been faithful and loyal to the Constitution and government of the United States, is honest, intelligent and competent to represent our county in said Convention.

"The undersigned comprise nearly the whole loyal voters in the said county; for, in fact at the election upon the Ordinance of Secession there were but fifty (50) votes cast in said county against it.

"And as in duty bound, etc., etc.,

(Signed)

John Havorty
T. F. Ferrell
A. J. Macdonald
Joshua Evans
Ezekiel Braden
James Robinson
Moses Ayers
A. C. Richards
Thomas Matthew
Granville Tingler
Ferrill Boners
Michael A. Ayers
Jasper Ball
William Pride
Emmanuel Geha
Laban J. Bennett
Jacob L. Bunner
Thomas G. Ferrell
S. V. Ayers
James F. MacDonald
James P. Hunte
Robert Been
James Barr
Alpheus Norman
G. W. Shriver
D. S. Havorty
Lemuel Havorty
Benjamin Barnes
Adolphus B. Ayers
Jacob Poling
Levi Proudfoot
Salathiel Stalnaker
William Hamrick
T. S. Stalnaker
James Ferrell
Harvey Robinson
William Barnes
Isaac B. Cox
D. S. Cox
Francis Robinson
Robert Bunner
Joseph Pride
Jesse McGee
F. W. Collins
Martin Smith
Alfred Barr
Valentine Ferrell
A. Richards
Isaac Richards
Jacob Poland
Em. Kighte
B. A. Kighte
Frank Ferrell
Henry Poling
James Bunner
R. Bunner

JOHN SNYDER
JAMES T. HOLT
JOHN HOLT
JOHN SIGLER
FORD WEBB
A. J. ERVIN
HENRY HATHAWAY
A. REEFE
JONY BUNNER
WM. L. CUNNINGHAM
JOHN CUNNINGHAM
S. NORMAN
BENJAMIN RIGHT
EMMANUEL RIGHT
HENRY BARR

It has sixty-eight signatures. Calhoun, it is known, is a very small county and the whole number of voters in the county probably would not exceed 175. Then deduct the secession vote—which I expect would be a tolerably strong one—and you will see that you would have nearly all the voters in the county; on the back of it is the affidavit:

"Virginia
"Wirt County,

"To Wit:

"Be it remembered that John Havorty and James F. MacDonald, whose names are signed to the written memorial this day appeared before the undersigned, a justice of the peace in and for Wirt county aforesaid and made oath that the facts stated in said memorial are true, as they verily believe.

(Signed) JOHN HAVORTY

JAMES F. MACDONALD

Subscribed to and sworn before me, in my county aforesaid,
(Signed) J. A. WILLIAMSON, Justice."

I do not know, sir, that it is necessary to refer this to the Committee on Credentials, as the whole subject is here, and members could probably act upon it without the intervention of a committee. I met the gentleman on the boat coming up, was introduced to him and he requested me to present his application. My own opinion is that it is one that the Convention ought to consider favorably. The object of the election is, of course, to ascertain the true will of the people of the county, and the evidence is here strong that a great majority of the Union voters are in favor of this gentleman representing them, that they were prevented by force of circumstances from holding an election at the proper time and have remedied it as soon as it probably could be done. Now, rules and regulations, and laws, and all things of that kind, are to effect certain objects; and if a strict adherence to the rule would defeat it, the rule ought to be nullified; and that would be the case here if because the election was not held on a certain day the Convention should decide this gentleman not entitled to a seat. The object of the election is as well ascertained as it could have been by an election. This body are the judges of the election, qualifications and returns of their own members. Nobody else can interfere with it. It is the privilege of all deliberative bodies whatever. Each house of Congress, each house of the legislature, judges as to its own members. The power then lies with this Convention to do justice to the efforts of Calhoun county, who while they have preserved a remnant, we ought to hail with satisfaction an effort to have them represented among us; and the more so as it is one of the smallest counties in the proposed new State. Do not let us go to crowding them because we have got the power.

If any gentleman prefers that this shall go to a committee, I am willing to submit; but I move that Mr. Robinson be admitted to a seat in this Convention as a member from Calhoun County.

The question was put to vote and the motion was agreed to.

MR. RUFFNER. During my stay at home, sir, I met very intelligent and respectable loyal men from the county of Nicholas, who expressed a very strong desire to be represented in this body. Whether it is possible now in time for the session of this Convention for these people to go through the regular forms of an election, if one should be ordered, I am not prepared to say. But if it is possible that a member could be sent forward in the same form in which the gentleman from Calhoun has been admitted, I think it very practicable for them to be represented; and if it be the pleasure of the Convention to admit members under similar circumstances hereafter I desire very much that that willingness shall be expressed by this body; and it would afford me great pleasure to forward to them an indication of the will of the house on the subject. If it be thought more regular to order an election, I would make a motion to that effect. I have the names of prominent loyal men who would make safe commissioners, and I submit it to the Convention whether one or the other form shall be indicated or whether at all they would authorize an appointment.

THE PRESIDING OFFICER. I would suggest if the Convention have the power to judge of the returns and qualifications of its own members, it must act on the case before them. The other power then results necessarily in a constitutional body in the legislative form. The gentleman can take the action in the case just before us as an indication of the determination of the case just presented.

MR. VAN WINKLE. I would state, sir, that the gentleman from Calhoun is present and will take the oath.

Mr. Robinson then came forward and the oath was administered to him by the secretary.

THE PRESIDING OFFICER. When the Convention adjourned on the twentieth of December, they had under consideration the twelfth section of the second report of the Committee on the Legislative Department. The first and second paragraphs of that report were amended and adopted. The third paragraph of that section is under consideration.

Will the gentleman from Doddridge step this way one moment.

Mr. Stuart of Doddridge took the chair.

MR. LAMB. Mr. President, the third paragraph of the twelfth section is as follows:

"No person who may have collected or been entrusted with public money, state, county, township, or municipal, shall be eligible to the legislature, or any office of honor, trust or profit under this State, until he shall have duly accounted for and paid over such money."

I move its adoption.

MR. VAN WINKLE. I should like to ask the chairman of the committee whether it is not defective in this respect: A person may have collected and been entrusted with public money, and the time for paying it over may not have come. It is intended I suppose to exclude defaulters.

MR. LAMB. Of course, of course, sir.

MR. VAN WINKLE. It seems to me it needs something—I am not prepared to say exactly what. I will submit this amendment, to come in after the word "municipal" "and shall have failed to account for or pay over the same according to law." I will reduce it to writing.

THE PRESIDING OFFICER. The gentleman will reduce it to writing.

MR. HERVEY. I would suggest to the gentleman, would not that be simply placing a new condition without making it a provocation?

The Secretary reported the proposed amendment.

MR. LAMB. I would merely remark the provision is not a new one. In the examination I have given the different constitutions I find a similar provision in a very large majority of them. The wording of the provision as it stands on the printed copy is pretty much the same as that in the constitution of Indiana:

"No person who may hereafter be a collector or holder of the public moneys shall be eligible to any office of trust or profit until he shall have accounted for and paid over according to law all sums for which he may be liable."

The terms "according to law" were accidentally omitted, which would have made the section all right.

MR. VAN WINKLE. I would withdraw that amendment.

MR. LAMB. I would suggest that by general consent the words "according to law" be added at the end of the section.

THE PRESIDING OFFICER. There being no objection it will be done.

The question is on the adoption of the latter clause of the twelfth section as amended.

MR. SOPER. It appears to me, sir, that the whole section, as read, is unnecessary. I see great difficulty may arise as to whether an individual has neglected to pay over, and these questions will come up probably upon his admission into the body after the election. I apprehend, sir, that we will not incorporate a provision into this constitution which would lead to a difficulty of that kind. It appears to me that the better way is to leave it to the people themselves in the county. If a man who is notoriously a defaulter should present himself for election, I have no doubt the intelligent people of the county, those who know the individual, are better capable of determining whether he is a competent person to represent them in the legislature than to hamper him with the provisions of this clause. If he is a man unfit to be trusted it is not to be supposed the people of any county will vote for him for so responsible a position as to represent their interests in the legislature. Now, sir, if he should be a defaulter to the amount of one cent, would not that of itself render him incompetent? Suppose it should be a matter in dispute and his election contested on that point, would not this constitutional provision place that individual in a situation to render him incompetent to receive the office? It appears so to me. And I think, sir, without having given this subject much reflection, that the better way is to leave it with the constituents of the person elected to say whether he is a competent man to represent them or not. Now, sir, we all know that whenever a man puts himself in nomination for the legislature, why his character, his standing, his capacity and everything relating to him is open for examination, and it is the subject of remark and investigation and of conversation throughout the whole county. And I think, sir, that the people are the safe persons to determine on that subject, and we ought not to hamper the individual with these kinds of objections which may be presented after he shall have been elected by the people of his county. Well, again, we know, sir—I speak now of the county that I represent—it is a contested election; there is always opposition to members; and I believe it is the desire of a majority of the people always to procure the best man, the most competent man. And if they should select that man and he was an individual who had had hold of monies in a usury capacity and should through mistake or inadvertence, if you please, neglect to have paid over a small amount of money, why, sir, the views of the people who elected him ought not to be frustrated in consequence of a provision of that kind. It appears to me the whole section itself is unnecessary, and therefore shall vote against it.

MR. LAMB. Mr. President, I find the people of considerably over twenty states have deemed it necessary to have a provision of this kind in their constitutions; and I am disposed—and the Committee of the Legislative Department were disposed—throughout their report, to attach very considerable importance to the decisions of experience in other states in regard to the measures which they should recommend to the adoption of the Convention. It strikes me, too, that it is not so much a question of whether the people should have a right to elect this man or that, as who shall be allowed to become candidates before the people. The people must select from the candidates that are presented. A man who is a defaulter ought not to be allowed, I think, to become a candidate. The very public money which he may have filched from the treasury that has been entrusted to him he may use to acquire influence of electioneerers in intrigues to secure his election. Is this right? Is it proper? It is true, sir, it is impossible to distinguish between a small default and a large default; and a man who is accidentally behind in his accounts if he has a notion of becoming a public officer and been entrusted with public moneys will see that his accounts are made clear. If he is only a cent behind, it will not be a very difficult matter for him to put that right. If he is a defaulter in a material sum, and desires to become a candidate for public favor, the first thing he must do will be to come forward, like an honest man and square up. He may then ask the favors of the people. He may then ask the confidence of the people. I think the provision a proper one.

The question was then taken on the third clause of the twelfth section, as amended, and it was adopted.

MR. LAMB. The last clause of that section is:

"If a senator or delegate remove from the district or county for which he was chosen, his office shall be thereby vacated."

This is copied from the seventh section of the fourth article of the Virginia Constitution.

MR. STEVENSON of Wood. I move its adoption.

The motion was agreed to.

MR. POMEROY. I move that the whole section as amended, be adopted. We have been adopting this section by clauses, and now we will have to take the vote to adopt the whole section.

THE PRESIDING OFFICER. I understand the section is adopted. It will come up on the adoption of the whole report.

MR. LAMB. The thirteenth section, Mr. President, is the anti-duelling provision, somewhat altered from the present Constitution of Virginia:

"13. Any citizen of this State who shall, after the adoption of this Constitution, either in or out of the State, fight a duel with deadly weapons, or send or accept a challenge so to do; or who shall act as second or knowingly aid or assist in such duel, shall ever thereafter be incapable of holding any office of honor, trust or profit under this State."

The present provision in the Constitution of Virginia gives authority to the legislature. It says:

"The general assembly may provide that no person shall be capable of holding or being elected to, etc."

The operation of the provision in that form has been such that I presume no one will contend that it ought to be retained in that shape. They passed a law rendering persons who have been engaged in duels incapable of holding any office, and when some favorite of theirs who has been engaged in a duel becomes a candidate for office, they repeal that law, and allow him to do so, and then after he has been elected, re-enact it! The provision in the shape in which the Committee on the Legislative Department have reported it is that which is generally adopted in the constitutions of other states. It is contained in a very large number of those constitutions; making it imperative, a positive exclusion which can only be got rid of by an amendment to the constitution or by the adoption of a new constitution. The experience of this country has shown that his is an offence which it is necessary to adopt extraordinary measures to suppress. Hence it has become so frequent a constitutional provision to exclude duellists from office. The men who are apt to engage in duels are generally aspiring politicians and a provision excluding them from all offices is perhaps the most certain check to the practice which can be devised. To render that check effective, which if adopted it should be, of positive exclusion beyond the reach of legislative repeal, I move the adoption of the thirteenth section.

MR. SOPER. Mr. President, I move, sir, to strike out the words "after the adoption of this Constitution," so that it will effectually, sir, preclude any man who has heretofore or shall hereafter be concerned directly or indirectly in the fighting of a duel.

MR. LAMB. I would remark that the Constitution of the United States provides that no *ex post facto* law shall be passed. I doubt very much whether you have the right to put in your Constitution a provision that operates retrospectively to punish a crime that had been committed before the adoption of the Constitution. It was for that reason that the words "after the adoption of this Constitution" were inserted in the section reported. It is enough to make laws and constitutions for the future without imposing new penalties on what is past.

MR. BROWN of Kanawha. Mr. President, while I cannot agree with the gentleman from Ohio in relation to the Constitution of the United States, that it has any control over us in this case—

that provision has reference, I imagine, only to the legislation by Congress, and the powers vested in Congress under the Constitution, prohibiting them—but, sir, the principle upon which that Constitution was based is the principle that must control us here, and that is the injustice and iniquity of attempting after an offence—

MR. LAMB. Excuse me, but the Constitution of the United States says no state shall pass any bill of attainder, *ex post facto* law, etc.

MR. BROWN of Kanawha. Yes, sir, I admit it.

MR. LAMB. Then, sir, that ends the question, because although this may not be the legislature it just as fully comes within the purview of that provision. It is a state act, an act of the people, an organic law, stronger than a legislative one. The principle is founded in justice; and whether we had the authority or not, it is a principle we should never depart from, that we cannot make and punish as an offence a thing which when the act was done was not an offence.

THE PRESIDING OFFICER. I would suggest to the gentleman from Tyler that his amendment does not reach the object he contemplated even if it would not be a violation of the Constitution of the United States. That amendment comes in where? After the word "shall"?

MR. SOPER. Yes, sir; that is what I propose, after the word "shall," "after the adoption of this Constitution."

THE PRESIDING OFFICER. The section would then read:

"Any citizen of the State who shall, either in or out of the State, fight a duel, etc."

MR. VAN WINKLE. That of course refers to the future.

MR. SOPER. My object is to exclude all persons who have been or who shall be concerned in a duel, from any responsible office.

THE PRESIDING OFFICER. The amendment does not reach your object, then.

MR. VAN WINKLE. I would suggest to my friend from Tyler that the clause of the United States Constitution referred to here certainly forbids the adoption of any such amendment as he indicates, and it had better, perhaps, for that reason be withdrawn, because we cannot go back and punish an offence heretofore committed with a different penalty from that prescribed when the offence was committed. If a man fought a duel a year ago no legislature could now pass a law to punish him. It must always be in the future. I am not so certain, sir, of the necessity of this clause in reference to the new State. As the state stands at present there was a portion of it strongly predisposed to fight duels; but I am not certain that in West Virginia that this clause will be necessary. It had got to be so grave an offence and so difficult to reach it, even through juries that it demanded a something more than the ordinary laws would afford. Duelling, in that section of the state, at any rate, and in a large section of the whole country was protected, as it were, by public opinion, and those guilty of it were, by the force of public opinion, frequently screened from the punishment provided by law. The first constitutional provision introduced into Virginia gave the power to the legislature to pass such a law; and they have been in the habit of passing the law and as soon as they got some three or four that were subject to it, then to declare an amnesty and remit the penalty of the law with respect to them. I must say if any provision is retained—if it is the view of the Convention that the offence is likely to be grave enough to demand this restriction—I would rather it would be retained in the present form, to make it absolute; not to put it in the power of the legislature to say that because a man has to fight a duel that they can remit the penalty. It is a vile crime; and all the worse because it is sanctioned by public opinion of those who consider themselves the higher class. I would repudiate and punish it in every way until the thing is broken up. It is a relic of barbarism and nothing else. But I prefer the clause as it stands in the committee's report to the clause in the former Constitution.

MR. SOPER. A single remark, sir, as to this constitutional objection. I apprehend that it will have no influence in this State. How far it would operate upon the senators and representatives in Congress, I am not prepared to say.

MR. VAN WINKLE. It does not affect them at all.

MR. SOPER. Then I apprehend there is nothing in the Constitution of the United States that would be applicable to the officers of our own State. Again, sir, the Convention has just adopted a section here which renders a man incompetent if he has collected five dollars of public money and has neglected or failed to pay it over. It appears to me the objection that is urged against the amendment that I propose might have been urged, or ought to have been, in the former case as well as in this. I apprehend, sir, there is nothing in the objection; and I am myself so totally averse to everything that looks like fighting duels or sending challenges in any shape or form that I cannot under any circumstances countenance them or leave the power with the legislature or any other body to remit penalties of this description.

MR. VAN WINKLE. I think my friend from Tyler does not understand the constitutional objection that is made, because the remark would not apply to the former clause in any way. The objection is that what he proposes is to make a penalty for an offence already committed which was not the penalty at the time it was committed; in other words, prescribe a punishment after the fact; for whether you punish a man by hanging him, or putting him in the penitentiary, or depriving him of the right of citizenship, it is all punishment, and it would be under the technical definition an *ex post facto* law, prohibited by the Constitution of the United States. A law that is passed to fix the punishment for an offence after it is committed is forbidden. But the gentleman's amendment without some change in the language of the amendment as proposed would not alter the sense an iota, because the "shall" would certainly refer to the future as it stands. I only wish to bring to the gentleman's notice the fact that this clause in the Constitution forbids what he aims to do as I understand it, and as the gentleman from Ohio says—that it positively forbids any state passing any such law, and whether we put the law in the Constitution or statute book it comes under the technical definition and would be ruled out. What we have not the power to do we had better, of course, not attempt to do, because it would be a mere dead-letter.

MR. SOPER. I prefer striking out these words, sir, and if stricken out I shall then alter the phraseology of this section so as to meet the object I have in view in offering this amendment.

MR. BROWN of Kanawha. It seems to me, sir, after reading the provision of the Constitution, however desirous we might be to strike out this and present the subject in the light presented by the gentleman from Tyler, we are absolutely forbidden. I, sir, concur with the gentleman in this, that it ought to be a constitutional provision as here contained, not as now in the Constitution of Virginia where the power is vested in the legislature to set aside at all times, and as often as crimes occur under it the provisions of the statute. Now, if this doctrine is to be maintained at all—and I confess I am one of those who think it a very high and important doctrine, that ought not to be departed from—it ought to be done in the Constitution, not in the statute; because we have no reason to believe that legislatures will do any better hereafter than heretofore; or that the statute will be any better after than before; and the last history of the State and of the country, sir, generally, clearly shows that this provision is a mere delusion. A provision in the constitution requiring the legislature to legislate on the subject, yet also giving the legislature at the same time power to declare an amnesty by repealing the law after every offence has been committed, so as not to interfere with those who have committed the act. The result of that legislation has been that the law is an embargo on all law-abiding men, a perfect nullity to all those who chose to disregard it. In other words, it is an invitation to the duellist to follow his profession whenever he chooses, with the certain assurance that he will obtain an amnesty the very moment he has committed the offence. We have found that in the legislature from year to year; that will be the case hereafter. If it is the intention of the Convention to carry out this policy, recognized in all the States of the Union, among all the civilized and Christian peoples of this age, it ought to be carried out effectually. I, therefore, am in favor of retaining this section precisely as reported by the committee; and after considering the amendment as suggested by the gentleman from Tyler, in the event that this motion to strike out succeeds, I confess I am unable to see that it will any better effect the end proposed.

The question was taken on the motion to strike out and it was rejected.

MR. LAMB. I move the adoption of the thirteenth section.

The motion was agreed to.

MR. LAMB. The fourteenth section, Mr. President, reads:

"14. The legislature shall meet once in every year; and not oftener, unless convened by the governor. Unless another time be prescribed by law, the regular session shall begin on the first Monday of December."

I move its adoption. It brings up the question of annual or biennial sessions. The latter clause brings up the question of the times of the meeting of the legislature.

MR. VAN WINKLE. "Meet once in every year?"

MR. LAMB. Yes.

MR. HERVEY. I move to insert after the word "governor" the words: "upon the request of the majority of the members of the legislature."

MR. LAMB. Will the gentleman look at the next section, which provides for that?

MR. HERVEY. Yes, sir; that meets the case.

MR. VAN WINKLE. I do not know what may be the opinion of members in reference to annual or biennial sessions. I do not know whether silence gives consent, but I might infer that they are in favor of the annual ones. I think, sir, however, that the biennial sessions have been tried to the satisfaction of the people in this and other states and they are now generally repudiated. The close of the business year, the winding up of almost all private business at that period seems to indicate that it is the annual date for also winding up the business of the State. I am, therefore, most decidedly in favor of annual sessions. I was opposed in 1850 to making the sessions biennial; although I felt compelled to vote for it, the opinion was so universal among my constituents in favor of it. But I think, sir, that among my constituents there has been an almost total change of opinion; and I apprehend it is the same elsewhere. I think in other states as well as this they have repudiated it and returned to the annual. It certainly does not render it necessary that the legislature should sit any longer. Nor have biennial sessions in this State been found to work so as to shorten the session. I believe there session after session has been extended either by the governor or the legislature, or there has been a piece put on the end of the regular session. So from practical experience the attempt that has been made in Virginia under the clause in the constitution for biennial sessions may be considered a failure.

MR. BROWN of Kanawha. I am one, sir, that believes the crying evil of the country is too much legislation. With that belief, I favored biennial sessions in 1850-51. We have tried for a term of years, and I confess, sir, I have found it wholly fails, and have been led by the experience to an entire change of opinion on the subject. Instead of resulting in less legislation, if it has had any tendency, it has been to increase it; instead of less session the expense to the state has been fully as great if not greater than with annual sessions; and the legislature not coming so freshly from the people have not in their legislation expressed public sentiment as fully as if there had been annual sessions. I believe today, sir, that we had had the annual session, the very legislature that called the convention together that brought us into our troubles would not have been called. I therefore go for this resolution.

The question was taken on the first clause, and it was adopted.

MR. BROWN of Preston. In the second clause of that section, sir, I move to strike out "December" and insert "January."

MR. STEVENSON of Wood. I was going to offer an amendment or suggestion to the gentleman to say the "second Tuesday" instead of the "first Monday"; but I will offer that as an amendment unless the gentleman thinks proper to modify his amendment.

MR. BROWN of Preston. I have no particular objections to the amendment.

MR. LAMB. In fixing the day, if January is to be the month in which the legislature is to assemble time should be allowed for closing the accounts on the first of January, for getting ready the different messages and reports before the legislature meets. The 31st of December would then be the natural termination of the fiscal year, and the officers could then have their documents prepared ready to submit to the legislature. If you say the second Monday or Tuesday of January, the second Tuesday may occasionally come on the eighth of January. There would hardly be time. The third Tuesday, I imagine, would be convenient in almost any case, answer equally well and allow full time for preparation of the reports from the different offices and business to be laid before the legislature after the end of the old year.

MR. POMEROY. I would suggest, Mr. Chairman, that it would be better in this case, as in many others, to first strike out. There is a difference of opinion about what should be inserted. I understand the gentleman making the amendment is willing to strike out the "first Monday in December" and then hear suggestions in regard to filling the blank.

MR. BROWN of Preston. At the suggestion of the gentleman, I withdraw the amendment and move to strike out the words "the first Monday in December."

The motion was agreed to.

MR. SINSEL. I move that we insert the second day of January.

MR. VAN WINKLE. O, no!

MR. POMEROY. That will often come on the Sabbath.

MR. SINSEL. Then I move to insert the first Monday.

MR. VAN WINKLE. Tuesday—still interfering with the Sabbath.

MR. SINSEL. Well then I put it first Tuesday of January.

MR. STEVENSON of Wood. Well, sir, I will offer to amend that by making it the third Tuesday.

MR. POMEROY. I second that.

MR. SINSEL. Mr. President, it seems to me if we adopt the amendment of the gentleman from Wood that if you give the legislature any time to transact their business it will throw them into the Spring so far that it would not suit their convenience so well—the farming interest of the country. It would probably be in March or April before the session would come to a close; and I think if we would commence earlier in the month of January, likely it would satisfy the whole agricultural interest of the country, or those who might be sent from that branch of business, better. So I am opposed to the amendment.

MR. LAMB. If you confine the session to 45 days—which is proposed in the subsequent section it will be over by the end of February, even if you begin on the third Tuesday of January. The third Tuesday will come somewhere from the 15th to the 21st of January.

MR. VAN WINKLE. Cannot come later than the 20th.

MR. LAMB. Cannot come later than the 20th, come somewhere between the 14th and 20th and the session would be over then by the end of February.

MR. STEVENSON of Wood. I will state, Mr. Chairman, that my only object in making that amendment was that the legislature might be prepared when they did meet to begin to prosecute their business without any intermission. If, as has been stated here, it will be necessary to have some time between the latter end of

December and the time the legislature meets, to prepare the matter upon which the legislature is to act, it will be absolutely necessary to give that time before the legislature meets; and I do not suppose it could be done in a shorter time than between the first of January and the third Tuesday of that month. I would have no special objection to the second, although I think, on reflection, that the third Tuesday would probably be a better time, at least in that respect.

MR. SOPER. If the object is to have the fiscal year close with December then we ought not to meet before February. I apprehend, sir, if it should close on the last of September then it would be proper that we should meet as early in January as we could fix a day. Now, sir, if the reports of the auditor and treasurer and other documents which it is necessary for the governor to have to prepare his message, are to be furnished to him so he can be prepared to send in his message when the legislature meets, why, sir, there is not sufficient time, if we meet in January at all. I am myself in favor of meeting on the first Tuesday in January and of having the fiscal year close with the last day of September. I do not know whether any committee has reported on that subject.

MR. VAN WINKLE. We have passed it, sir, I think.

MR. LAMB. No, there is nothing from that committee.

MR. SOPER. I am in favor of the Tuesday first in January, sir, but not with a view of having the official year close on the 31st of December.

MR. POMEROY. I am not at all tenacious about the day; but I think the great object is to get rid of this difficulty about the holidays. That has been the object in other states, and they have changed. Instead of having the difficulty in regard to the holidays, and lengthy discussions and time spent in regard to the important matter of whether a man ought to have pay for not doing any labor, they would meet after the holidays were over and then that matter would not come up and there would be no reflections cast on the members. Now, it appears to me that January and February and the first part of March is the time that men would have as much leisure to leave their other business and attend to the business of the legislature as any other time in the year. I cannot conceive of a time that would be better. Well, if you say the first Tuesday of January as they do in some states, why it often occurs on New Year's day and consequently there is nothing done. They may assemble and draw pay for it, but they do not pretend to legislate on that day. They look upon it as kind of wrong to legislate on New Year's day. Well now, by saying the third Tuesday, we get rid of that. It will extend the session to about the tenth of March. That is a time when men are not very busily engaged, even farmers; and I think it would suit all concerned, and will be a much better time.

In regard to the suggestion of the gentleman from Tyler, I think the public officers, having the matter before them, would have their reports so nearly matured that they could close them up in the intermediate time, after the 31st of December, if that be the date fixed by the Convention for the fiscal year to close; they could close all their accounts by the third Tuesday of January.

If we accomplish our object, as I hope we will—notwithstanding the opinion that has been advanced somewhere that we are likely to prove a failure; I hope we will be successful in getting this new State and that we will start right, and if we start right we will keep right—that we will not have a legislature sitting a great number of months and that they will be required to do up the business. That is one of the reasons I am in favor of annual sessions: if a man doesn't do right we will turn him out. If he votes to extend the session and he comes before the people he will not be elected—unless he gets votes enough. I am in favor of making a liberal constitution and keeping down the expense; for that is what the people look for, after all. And I am in favor of the amendment to meet on the third Tuesday of January.

MR. VAN WINKLE. I am in favor of the amendment as proposed by my colleague for the reasons generally that have been stated. I apprehend that this new State, with its small territory can dispatch its legislative business, of course, in less time than it would take for the whole State of Virginia. It is very certain that the smallest states do hold less lengthy sessions than large ones. But the gentleman from Tyler is right that from December 31 to any time in January would not afford sufficient time to prepare the reports. The time allowed in this state is from the 30th of September up to the first Monday in December and is not more than seems to be sufficient. The other objects to be attained by it I think are worthy of consideration. We all know that the close of the year is the time throughout all this country for settling up the affairs of this territory. Merchants make up their accounts to that time and some people are glad if they have the money to pay off. These and other circumstances render it to the delegate himself an inconvenient time to leave home at the end of the year —inconvenient to himself and to his business. Well they come here, and the necessity of going home to see after their business —not simply the wish to partake of the festivities of the season or to see their families, is the governing idea. It is the demands of business, which sometimes are very imperative. I think by putting it after the first of January we certainly do tend to save time and money. In Congress, as we see every year, they have a long recess over the holidays, and it is a common thing that nothing is done in December. It is so easy to say "take it up after the recess; we will not have time to discuss or consider it now." But, if the legislature meets on the second Tuesday in January there is time enough to hold the session before the business of the spring fairly commences; and if the business does commence in March, with lawyers, farmers, merchants, etc., I think, sir, we have accidentally hit upon one of the best remedies in the world for long sessions. If the interests of the members of the legislature themselves require them to go home in March, we have the best security we can have that the sessions will not be too much protracted. For that reason, I shall be in favor of commencing as late as the middle of January. It appears to me, sir, that for various considerations we, of course, can draw down the time for closing the fiscal year to the first or middle of November, which will give the two months time now allowed for making up the accounts of the public officers in order that the governor may have them before he sends in his message. It is easy to change that. And, sir, it appears to me also that the very fact that it would enable us to make the close of the fiscal year later than September 30th would be some convenience to the people. The assessments are made in the Spring; sometimes it is June or later before they are placed in the hands of the sheriffs for collection. A little longer time would then be afforded each year for the collection of taxes, I think the change would result in some convenience all round.

MR. HARRISON. Mr. President, I have one objection to the time proposed in this amendment. We elect our delegates the fourth Thursday in May, and it is so long a time before they meet —nearly a year. Perhaps this can be remedied best by changing the time of election, and I am ready to change it if necessary. They are not fresh from the people and the object of annual elections is to have them come fresh from the people. It seems to me this object is not met if we elect the legislature a year before we convene them. We ought to change the time of election or else have them meet earlier. I am ready to change that if that will bring the election and the time of meeting closer together.

The question was then taken on the motion to make the time of meeting "the third Tuesday of January," and it was agreed to; and, on motion of Mr. Stevenson of Wood, the clause thus amended was adopted.

THE PRESIDING OFFICER. The question now recurs on the fifteenth section.

MR. LAMB. The section is:

"15. The governor may convene the legislature by proclamation whenever in his opinion the public safety or welfare shall require it. It shall be his duty to convene them on application of a majority of the members elected to each branch."

That is, I believe, the same provision which is in the present Constitution. (Mr. Lamb then read the same provision from the Constitution of Virginia: "The governor shall convene the general assembly, etc., etc.")

I move its adoption.

THE PRESIDING OFFICER. Do I understand the gentleman to move the adoption of the first clause or the entire section?

MR. LAMB. The whole section. I suppose there is no necessity of having the vote by clauses.

The motion to adopt the section was agreed to.

THE PRESIDING OFFICER. The question now recurs on the sixteenth section.

MR. LAMB. That reads:

"16. The seat of government shall be at the city of Wheeling, until the legislature shall establish a permanent seat of government by law."

I move its adoption. I do not know what else we can do.

MR. VAN WINKLE. I move, sir, to strike out "the city of Wheeling" and insert "the town of Parkersburg." We have plenty of accommodations there for the bodies and the members and it is a much more central and accessible place to the majority of the members than the city of Wheeling away up in the boundary. If you put one end of a pair of plyers, sir, upon Parkersburg and the other upon the northern extremity of Hancock and describe a circle on the point at Parkersburg, you will find it just includes the whole new State, making Parkersburg the very center, geographically, on the river of the whole State. Runs right along the ridge of the mountains. It is remarkable it is so—but it is so. I am sorry it should be, on account of the city of Wheeling (Merriment). But I must ask the gentleman now making this proposition to change it. It will be, I am satisfied, most convenient to most of the members. They can judge best themselves. But the impression is very strong on my mind that for convenience of access Parkersburg is the center of the new State. You might find a geographical center up in Braxton where nobody can get. But we are at the end of a railroad, on the river; we have two great State turnpikes, north and south going in there from the direction of Staunton and Winchester; besides others come in from other points. A turnpike nearly completed from Charleston would be a good, eligible route even in winter time in most seasons. There are buildings there sufficient now for the accommodation of the body when it first meets, and they can take order then as to where they will meet afterwards, of course. The hotels are sufficient for their accommodation also; and it strikes me that you equalize the travel and compensation, and in that way perhaps there would be some saving to the treasury. But it is the convenience and accessibility of the place which ought to determine; and the first session can be held there, I apprehend, as well as anywhere else.

MR. BROWN of Kanawha. I suggest to the gentleman to withdraw his motion and move to strike out only—perhaps he might have more votes to strike out than to insert.

MR. VAN WINKLE. Any gentleman can call for a division of the question. It is not for me to do it.

MR. BROWN of Kanawha. Then I call for a division of the question.

MR. SOPER. I am for the section as it reads. I do not want that we shall drag into the Convention this question of the permanent seat of government. I want to see no motion leading towards it until after we can get the people who are in favor of the other part of the State having the permanent seat of government to sustain our Constitution. After we get that adopted I have no doubt the people will fix a permanent seat. Now, sir, it is conceded, I believe, on all hands that we cannot be accommodated so well in any other part of the State as we can be here for the present.

MR. VAN WINKLE. I expressly stated that I did not so concede—I beg your pardon.

MR. SOPER. I think gentlemen who have been at both places will not find much difficulty in coming to a conclusion on that subject. It is certainly admitted, however, sir, that Wheeling cannot be the permanent seat of the government of this State. If we have it within the boundaries as now prescribed, at some future time, whenever the necessity may require it—whenever the removal will be beneficial to the State, it undoubtedly will be removed. I think we had better not agitate the question at this time, and move the section as it reads. I am opposed to striking out.

MR. LAMB. Mr. President, the gentleman from Tyler has stated very fairly what was the main object in reporting the resolution in its present shape. It was thought we might in this Convention avoid the agitation of the subject of a permanent seat of government. The motion to amend raises that question direct. Wheeling, I suppose has no pretensions when the new State shall be organized and in full operation of becoming the permanent seat; but the amendment which is offered by the gentleman from Wood does raise that question direct. It has a direct bearing which cannot be overlooked upon the question of a permanent seat of government. Is it proper that we should bring that subject of agitation into this Convention? I am not going to offer any argument in favor of the claims of Wheeling, remaining where we are until the permanent seat of government can be fixed; but I would ask the members of the Convention do they want to agitate the question of a permanent seat of government now? Had we not better lay it over? Let matters remain as they are until, in more quiet times, when our new State has been organized, the question can be properly and deliberately decided. Parkersburg will have pretensions then; indeed, strong pretensions. But I do not want to see more subjects of agitation raised before us, at present at least. I think it would be much the most judicious course for the Convention to give this subject the go-by in all its deliberations for the present, and let the resolution pass as it is reported.

MR. VAN WINKLE. I certainly can see no reason because the committee have fixed in one place why no other shall be talked about.

MR. LAMB. The committee did not fix upon one place. They just talked about it.

MR. VAN WINKLE. Well, sir, I do not know, besides, that there is much reason for keeping things out of this Convention. I think it would be as able to decide as perhaps the legislature would. However, sir, the motion is not now to fix the permanent seat of government. If the gentleman thinks there is any advantage in it sought by the town of Parkersburg in trying to get put in here as the temporary seat of government there may be as much in retaining the city of Wheeling, so that the thing is about equal there. In reference to remarks that have been made here, I state again that the legislature can be abundantly accommodated in Parkersburg. We have a place of some 3000 inhabitants. We have three large hotels, besides small ones; as fine a court house as in the western part of the State; two or three large halls—three if not four—that are devoted to public purposes. We have a delightful, pleasant atmosphere, free from smoke (Laughter) and many other things which I do not like to allude to particularly (Smiles).

MR. BROWN of Kanawha. I do not think that this question is one of such very great importance that it need throw us entirely off our guard, raise a breeze in the Convention that may blow us up. The gentlemen seem to think that we are in danger of an explosion if this question is introduced. I regard it as a matter of very little importance. It is in contemplation that the legislature will not sit very long—very many years—before they determine on some place for a permanent seat of government. The only question with me is, if we fix a time for assembling—as we have done—the legislature on third Tuesday of January, how the members of the legislature will ever get to Wheeling on foot or along the railroad. A man comes from McDowell, Wyoming, Logan, Boone, Cabell or Wayne, or any county below Parkersburg, unless he has been disappointed by the extraordinary character of the season in finding snow in the summer and sunshine in the winter, he will have a difficult time to arrive at this place. If he takes it either on foot or on horseback, it would be a rough road to travel, I believe. I think it would be extremely doubtful if he would ever reach the place by water. I think, therefore, that the convenience of the legislature, even for the first session, might be a consideration that would induce the selection of some other point if this was stricken out. I am one who thinks with the gentleman from Parkersburg that Wheeling has not all the advantages in the world, and I am one who thinks with the gentleman from Ohio that Parkersburg has not all. There are other places. I, therefore, shall vote for striking out.

MR. RUFFNER. I would inquire of the gentleman from Wood a statement in regard to the comparative expense of living in the two places, into a calculation.

MR. VAN WINKLE. I am not able to say altogether. Parkersburg is a cheap place to live, and we have a very good market there at all times. I cannot say what the comparative prices are. I have not been engaged much as a housekeeper. I suppose the advantages for getting provisions and bread stuffs at both places are about the same. The hotel charges here may be higher; but whether for the same class of hotels, I do not know. I apprehend —I claim—that there is no great difference in that respect. We have a remarkably healthful place, and we generally look pretty well, feel pretty well and do pretty well!

MR. POMEROY. I hope this motion will not prevail. We have accommodations here that we would likely have no other place; and, besides, if the motion to strike out prevails, then there will be different places mentioned, and every man will think his particular town ought to be adopted, and we may be charged—I do not say we will be—with meddling with things that do not belong to us. I think we had better not change now. I have no idea that there are the same accommodations anywhere else at the present time; and if we would move from here—to go to Parkersburg, say —the legislature may move the capital from there, and you would be moving the capital about a great deal. I think you had better remain here until the legislature decides where the permanent capital of the new State shall be.

MR. DERING. Mr. President, I think, sir, that for the very short time this provisional government will be in operation, the Convention had better not strike out as proposed but that Wheeling will be maintained as the temporary seat of our government. The motion does raise, as the gentleman from Ohio says, the question as to where the permanent seat of government shall be located.

There are various points, sir, that will be candidates for that position. I think at this time it would be better to remain where we are. I trust by next fall, sir, we will have our new State in operation; and then the legislature may settle definitely where the seat of government shall be.

The question was taken and the motion to strike out was rejected; and on motion of Mr. Lamb the section was adopted.

The question recurred on the seventeenth section, which was read by the secretary as follows:

"17. When by reason of war, insurrection, contagious or epidemic diseases, or for other cause, the legislature, in the opinion of the governor, cannot safely meet at the seat of government, the governor, by proclamation, may convene them at another place."

MR. STEVENSON of Wood. I move its adoption.

The motion was agreed to.

The question recurring on the eighteenth section, it was reported by the Secretary as follows:

"18. No session of the legislature, after the first, shall continue longer than forty-five days, without the concurrence of three-fifths of the members elected to each branch."

MR. SOPER. I would remark that the time for recess has arrived. (The hands of the clock indicated 12.)

Several members corrected him.

THE PRESIDING OFFICER. I understand it has not arrived yet.

MR. SOPER. Beg your pardon, sir, I thought it was twelve.

MR. LAMB. The present Constitution of Virginia provides for biennial sessions and limits the session to ninety days. We provide for annual sessions, limiting the length of the annual session to forty-five days. More time would therefore be allowed to the legislature of the new State for the purpose of legislation than is now allowed to the legislature of the whole State; because the territory that will be embraced in the new State requires and receives less legislative attention than the territory that will remain in Virginia. I mention this to show that the forty-five days, the legislature meeting annually, ought certainly to be sufficient for the transaction of legislative business. We find, also, provisions of this kind in the constitution of several of the states. In some the sessions are limited to forty days, in others to sixty days—states having a much larger population and hence a much larger amount of legislative business than ours. Some states have adopted a limitation operating in the same way though not exactly in the same form. Instead of limiting the session annually, the State of New Jersey, for instance, allows her members of the legislature three dollars a day for the forty days, and if they stay over the forty days they only get one fifty ($1.50) a day. I would prefer the provision in the shape here reported, as a provision like that of New Jersey inserted in a constitution would seem to imply that the legislature would continue as long as the pay lasted and could be choked off only by cutting off the pay. Other states have a per diem for the legislature, but provide that the whole amount shall not exceed a certain sum. New York provides three dollars a day, but provides that the whole per diem shall not exceed three hundred dollars; so that if they sit over a hundred days they get nothing. I think, as well as we can judge from the provisions that have been found to work practically in other states that if we have annual sessions forty-five days will be abundance of time to allow the legislature. But in case of an emergency, three-fifths of the members may extend the session—"three-fifths of all the members elected to each branch" would have to concur in extending a session.

MR. BROWN of Preston. I move as a substitute for the proposition, the following:

"No session of the legislature, after the first, shall continue longer than thirty days without the concurrence of three-fifths of the members elected to each branch; and such concurrence shall in no case extend the session for a longer period than fifteen days."

MR. VAN WINKLE. I think that amendment is entirely too strict and the times fixed are too short. Without the latter clause of the section under consideration, I should be opposed to the former. I think we have got in this country generally to exhibiting too little confidence in our neighbors. Now, sir, with all these states cutting down the pay and limiting the time and so on, I doubt whether even ten members of a legislative body at one time voted to continue a session on account of the pay. The reasons that sessions have to be extended is that all men are not what you call business men; that business is protracted and slipped over in the beginning and then everything has to be rushed at the end. In that way sessions are spun out, and by fixing a time when the session must terminate, why you get even the lazy ones to work. They will begin at an early period to spur themselves up; but I don't believe—and I should hesitate very much to place anything in this Constitution that would seem to denote a want of such confidence in those who are to be the members of the legislature as to suppose for one moment that the temptation of a few dollars pay would lead them to put the State to great and unnecessary expense. So far as it is necessary for a limit to be fixed, I am willing; but I am not willing that the public business should be sacrificed in any way for considerations even of that kind and especially on account of pay. An amount greater than the whole pay of a legislature might easily be sunk in the sea for want of a day or two, or as good as sunk. I think the provision as it stands is the true one—the principle of it. I think the number of days given is rather under than over; but I will not say much about that, as three-fifths could extend it. If you bring it down to forty-five days and then require more than a majority of the whole number elected I think you have all the spur you can get. I differ with the gentleman who proposes to limit the session to thirty days; do not think it possible such a body could ever get through its business in thirty days; because we know there are preliminary matters to be settled; before you can go into the main matter; the action of the committees must be had first. Do we not find here that when the committees have efficiently discharged their duties much time is saved to the Convention. That is the case in every legislative body. But they must have time to act; must have meetings, send for information, from abroad sometimes; call for information, sometimes, from the executive department, and sometimes they must get information from a distance. I think, sir, that would tend to show that thirty days, as proposed, would be too short in all cases; and I am not certain that forty-five days is not too short. But with the other provision for an extension, I am satisfied to leave it as it is, believing the limited territory of the proposed State will not require as long sessions as in other bodies, and that the committees of a small body could dispatch their business as well as those of a large one. I think if we require the concurrence of three-fifths of a body such as the people of this new State will elect—and I will add such as the State of Virginia ever have elected—that we certainly ought to believe that there is public virtue enough in the majority (or more than the majority) of that body to do what is right, under the circumstances. I do not like the spirit of these restrictions; when they are imposed on the supposition that the men whom the people will send to represent them in the legislature will not be fit men to be there. Because if we are to suppose that a majority or even three-fifths of such a body would be governed by a corrupt motive in extending a session, or by any motive except that they judged such action promotive of the public good, we are doing discredit to human nature, and particularly that part of it with which we are in immediate connection. I hope no restrictions founded on such suppositions will be imposed. On the other hand, I would be in favor of placing some restriction as that a definite day be fixed. The first session of Congress may be prolonged until the day the next commences; but the second session must terminate on the fourth of March; and we know that business is done more readily in the short session than in the first. A member has some project that he wants to get through. Well he knows that unless he is industrious about it, unless he can bring the house to act on it at an early day the measure cannot pass at that session; and it gives a spring to the industry of all concerned. All who wish the passage of such measures will unite in trying to get them through while the time permits. But, sir, if three-fifths of any legislature that may be elected from this proposed new State will say they want a year to do the business in, I am willing to give it to them, because I cannot believe that so large a number would protract a session for any other than proper public considerations. If they had neglected their business, in the first place, perhaps for want of experience, they ought to be allowed, if they wanted more time to take it. Their constituents would be able to judge, and leave them at home next time if they do not do right—the grand republican remedy.

MR. BROWN of Kanawha. I confess, sir, that I must oppose this amendment. It seems to me that the principle upon which the amendment is founded is that indicated by the gentleman from Wood. It is an apprehension that the representatives of the people will abuse the trust confided to them. Now, it seems to me that in a government of this character the great object ever to be kept in view is that the representatives of the people will, ordinarily, regard the wishes and welfare of their constituents; and, secondly, if they do not the constituents will take care of them at the next election. I confess, sir, a very short experience has brought more forcibly to my mind the evil of too hasty legislation, that it is crude and ill adjusted; and the danger of it is that it is pressed along in a hurry, and the result is when the legislation is over and you have an opportunity to feel the effects the laws have on the people, the next session is occupied tearing up what the previous one did; and instead of making stable laws, it results in an annual round of making and unmaking the laws of the land. The business of the country, the wants of the community, cannot be regulated by the arbitrary limit you fix to the length of your sessions. Their length should therefore depend on the wants of the community. If you fix too short a time for the legislature to do the public business, it will result in one of two things: either they will hurry up in the beginning, and cannot pursue the even tenor of their way, or they find themselves nearer the end of the session than the end of their work, with a mass of business crowded on their calendar, unable to accomplish it within the limit allowed, so that they will have to read bills by their titles and pass them inconsiderately or not at all. The result is legislation that will have to be repealed at the next session, but in the meantime the people have to suffer whatever inconvenience and harm may grow out of it. I think, therefore, sir, that prudence, wisdom and economy that the legislatures that are to be chosen by the people should have a liberal time to discharge their functions and also should have the discretion by the vote here indicated—I should have preferred three-fourths, but am content to take three-fifths—given them to determine at the end of the time fixed whether the necessity requires a longer continuance of the session. If they abuse that trust they are answerable to the people. But I am satisfied that legislative sessions are not prolonged from any mercenary motives that are often imputed to them. I imagine, sir, that legislatures never dream of such a thing, that the desire to be off for home overrides the desire to continue the session at the per diem allowed, but a sense of public duty requires them to continue the session until the legislation is finished. The difficulty is that in the inexperience of many business is not dispatched in the early stages of the session and has to be crowded through at the end; and often do we see bills passed through at the heel of the session read by their titles, not a man except the patron of the bill knowing what the contents are. That is one of the great evils of legislation that we are to guard against; and the way to do that is provide that they take time enough to transact the public business with the proper deliberation. Otherwise they will say to their constituents: why, sir, we were obliged to rush it through or we could not get it through at all. You demanded action and have got it, good or bad.

MR. SOPER. I should have preferred sixty days to forty-five days. It is fraught with evils. One can hardly describe them. And again, sir, the first few days of a session members are not prepared to get down to work. It takes several days to form your committees. It is necessary that they should have some consultations together before they are prepared to act. This is not a fault to be attributed to the members of the legislature, I apprehend, at all. It is the inevitable result of the position in which they are placed. Then, again, sir, gentlemen who are conversant with matters of legislation know that subjects of legislation accumulate. This is attributable probably, in a large degree to the constituency. They are negligent in preparing their petitions and applications, getting their papers prepared in time to have them introduced in the legislature to attain the object that they have in view; and you will find, sir, that, give as long a time as you please, when you come to the close of the session there is always a hurry; a good deal of business which remains unattended to will be passed over for future legislation. Well, then, again, sir, we are commencing here a new State. It is true the first session is to be an unlimited one. But I apprehend that the second session, after we have been in operation a year, we will find a great variety of amendments necessary, and that probably may be continued for two or three years afterwards. Many acts of the legislature at the first session will probably involve a constitutional question, and that cannot be determined on until it has passed through the various courts which we have called to settle questions of that description. So that almost inevitably for several years we shall require legislation of considerable length. I am opposed, sir, entirely to the amendment.

The question was taken and the substitute moved by Mr. Brown of Preston was rejected, the mover alone voting in the affirmative.

MR. LAMB. I move the adoption of the section.

MR. SOPER. I propose at the end of the section to add the words: "who may extend it not exceeding thirty days."

Now, sir, I am for limiting the length of the session for this reason: a vigilant member of the legislature who has charge of the wants of his constituents will press at the earliest opportunity every thing that is necessary for that interest through the legislature. But then in almost every legislative body—particularly such as I have ever had any knowledge of—I find that there are a great many very worthy men, in whom their constituents have great confidence, who in the performance of their legislative duties evince great negligence; and it requires a limit in order to urge them up. The same may be said, sir, of the constituents of the members. If they know that the session of the legislature is limited why it will induce them to be more active in getting their matters prepared and having their claims reached so as to get final action on them. I, therefore, think, sir, that the limit I have offered is nothing more than a reasonable one. It will extend the whole session—if the whole length of time in the opinion of three-fifths of the legislature is required—it will extend the whole session to seventy-five days. I have no doubt myself that seventy-five days will give the legislature time to digest and properly to pass every necessary and required act. I do not think myself it would be prudent or safe to give them any shorter period. I have known, sir, that where these restrictions have been thrown around members of the legislature, I have known it to be the cause of extra sessions at a very heavy expense. A thing of that kind ought to be avoided if possible. I think the provision now, forty-five days, and giving the power to three-fifths of the members to extend it, and limiting them not to exceed thirty days, it will be a safe and beneficial provision. Therefore, sir, I am in favor of the amendment I have proposed.

MR. POMEROY. I prefer, Mr. President, the section as it stands. The wording of this section by the committee I think is very judicious. It requires three-fifths, not of the members who may be present, but three-fifths of the whole number of members elected to each branch to extend a session. I think sessions will be extended only where there is some urgent business that cannot be completed before the expiration of the forty-five days; and as has already been stated by the gentleman from Kanawha, the members of the legislature will be accountable to their constituents. We will expect it to be a very rare thing that the session will be extended over forty-five days, occurring perhaps once in a century: I hope not more than that. We find that many legislatures in the different states where they prosper and get along well, their sessions are very short. It is true many of them are small states, and I think we must always bear in mind that we will be a comparatively small state and our resources will not be very great at first; and the session I think is about the right length. The men can meet and do a great amount of business in that time. But if there should be any urgent business that they cannot accomplish, we give them power to extend the session; and it requires such a large number to extend it that they will feel they are accountable to the people. I think seventy-five days of legislation would be a little too much legislation for the State of West Virginia: too much legislation and too much expense. I am therefore in favor of the resolution as it stands.

MR. LAMB. Mr. President, we must recollect that we are proposing to adopt a Constitution which is to be permanent, to answer for all times and all emergencies. In any ordinary case, no doubt, the extension of the session for thirty days would be sufficient. But who will pretend to foresee all the emergencies that may hereafter arise and that may require the legislature to continue in session for more than that period. The latter clause of this section was intended to place in the hands of the legislature a power adequate to provide for any emergency, if our Constitution should prove to be acceptable to the people and should prove a permanent Constitution. Is it not necessary to shape our measures with a view to this great object; that there may be a power somewhere which may be adequate to meet the emergencies of the future for as long as this Constitution may last? If we find it inadequate, it will not be an easy matter then, as it is in cases of ordinary legislation, to have a new law passed amending it. Had we not leave the section in its present shape, trusting that when three-fifths of all the members elected to each branch concur in an extension of the session that the time for which they will extend it will be a reasonable and necessary time only? Why, we know at the first session of this legislature which is to occur—we recognize it in this Constitution—a state of affairs will exist which makes it necessary to leave the legislature unlimited. In the future how many emergencies that no man can now foresee or anticipate may occur of a similar character? If three-fifths of all the members elected to each branch concur in extending the session, will they not be as well capable, with the emergency before them, and pressing on them, to say how long that extension should last as we are now to anticipate all future emergencies and prescribe a rule to operate ten or twenty years hence?

MR. SOPER. I am decidedly in favor of the proposition, the amendment I have proposed. Why, sir, as the section now stands, if we should be so unfortunate as to get a legislature pleased with their position and situation, and who would like to live in the city of Wheeling or Parkersburg and receive the compensation we are going to give them, they have got the power of sitting the whole year. They can extend and extend; and let me say to gentlemen that while there are a few active vigilant men in a legislature that press forward their business, do everything that they have got to do quickly, expeditiously, there are a large number of them who have to rely on others to aid and assist them, and when they find an unlimited long time given to them they will put off and give their business the go-by. And then you will find in every legislative body a class of men who if you ask when they are going to close the session, they will say: when we get through with our business. I never knew a legislature to get through with their business. It accumulates upon them, and they are always driven for the want of time. A great deal of hasty legislation, even then is done, and that is experienced in every legislative body of this Union. I consider it, sir, to be of vital importance, that this session should go limited; and I think that any gentleman who has been a year in our legislative halls with the mode and manner in which gentlemen do business, and the constant applications for new legislative provisions that are pressing upon them—gentlemen who have had that experience will see the necessity at once of coming to this conclusion. True, three-fifths is a very respectable vote of the number; but here may be a gentleman from Tyler, another from Doddridge, another from Kanawha; here may be various gentlemen all round that may have a single act that they want to get reached. Now, in order to get time, why every man who has got an application on hand will give his vote for the extension of the time; well when he finds himself pressed that he had better give himself time enough. No, sir, I insist that the amendment that I offer is a wholesome one. And as to doing the legislative business of this State in thirty or forty days, it is all idle to think of it. Now, you may go to Richmond, if you please, where the session was limited to ninety days: did you ever know a session to close at the end of ninety days? Go over to New York, if you please, where it is a hundred days and where after that they get nothing; did you ever know a session to close then? No, sir, and it either results in forcing an extra session or otherwise a large portion of the legislative business must be left undone, and a portion of it done in a hasty and inconsiderate manner.

The time has arrived, sir, for our recess.

THE PRESIDING OFFICER. The time for our recess having arrived, the Convention will take a recess until half past three.

THREE-THIRTY O'CLOCK, P. M.

On reassembling at the appointed hour, Mr. Stuart of Doddridge resumed the chair, and said: When the Convention took a recess it had under consideration the eighteenth section of the second report of the Committee on the Legislative Department and the consideration of the amendment offered by the gentleman from Tyler was pending. Will the gentleman commit his amendment to writing.

MR. SOPER. Yes, sir.

THE PRESIDING OFFICER. The question is now on the amendment of the gentleman from Tyler to the amendment. He moves to add at the end of the eighteenth section the words: "who may extend it not exceeding thirty days." Is the Convention ready for the question?

The question was taken and the motion to amend was lost.

MR. LAMB. Mr. President, I move the adoption of the eighteenth section. It has been sufficiently discussed I suppose.

The motion was agreed to.

The question recurred on the nineteenth section, which was reported by the Secretary as follows:

"19. Neither branch, during the session, shall adjourn for more than two days, without the consent of the other. Nor shall either, without the consent of the other, adjourn to any other place than that in which the legislature is then sitting."

MR. LAMB. This provision, Mr. President, is found in the constitutions of all the states and in the Constitution of the United States. I suppose it needs no explanation. The only difference I find in the different provisions adopted in the constitutions is some of them say "two" days and some "three." I suppose, sir, there is very seldom any necessity for one branch adjourning without the consent of the other, and probably we might as well adopt the shortest time. I move its adoption.

The motion was agreed to.

The twentieth section was reported by the Secretary and adopted, as follows:

"20. Each branch shall be the judge of the elections, qualifications and returns of its own members."

The twenty-first section was reported as follows:

"21. A majority of each branch shall constitute a quorum to do business. But a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner as shall be prescribed by law."

MR. LAMB. Some half-dozen constitutions require two-thirds to constitute a quorum; the balance of the constitutions of the states and the Constitution of the United States require, as we have got it, a majority. I move its adoption.

The section was adopted.

The question recurring on the next section it was reported as follows:

"22. The senate shall choose from their own body a president, and the house of delegates one of their own number as speaker. Each branch shall appoint its own officers and remove them at pleasure; and shall determine its own rules of proceeding."

MR. LAMB. Mr. President, the adoption of this section will necessarily, I presume, dispense with a lieutenant governor. It is proper the Convention should understand the full bearing of it. Under our present constitution, we elect a lieutenant governor, who is *ex officio* president of the senate. He is a very unnecessary appendage. The Executive Committee propose to leave him out. I presume we could get along very well with a senate electing their own president.

The section was adopted.

The twenty-third section was reported as follows:

"23. Each branch may punish its own members for disorderly behavior; and, with the concurrence of two-thirds of the members present, expel a member, but not a second time for the same offence."

The section was adopted.

The twenty-fourth section was reported as follows:

"24. Each branch shall have the power necessary to provide for its own safety, and the undisturbed transaction of its own business, and may punish, by imprisonment, any person, not a member, for disrespectful behavior in its presence; for obstructing any of its proceedings, or any of its officers in the discharge of his duties; or for any assault, threatening or abuse of a member for words spoken in debate. But such imprisonment shall cease at the termination of the session, and shall not prevent the punishment of any offence by the ordinary course of law."

MR. LAMB. This provision, Mr. President, is not a new one. I find something—in fact the same, in the constitutions of over twenty states. It is an authority which it is necessary for a legislative body to exercise, at all events, whether expressly in the Constitution or not: an authority which probably they would have whether expressly given in the Constitution or not; but to obviate all legal questions in regard to the matter, the conventions in twenty odd states deemed it necessary to insert a provision similar in effect to this in their constitutions.

The section was adopted.

The 25th section was reported and adopted as follows:

"25. For words spoken in debate, or any report, motion or proposition made, in either branch, a member shall not be questioned in any other place."

The twenty-sixth section was reported as follows:

"26. Members of the legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during the session, and for ten days before and after the same."

MR. LAMB. A provision of this kind will be found in the constitutions of all the states, the only difference being as to the time. Some states privilege members from arrest during the session and in going to and returning from it without specifying the precise time. Others specify the precise number of days, as it is here. It was thought better by the legislative committee that the exact time should be stated, in which the privilege should exist, so that officers of the law should have no difficulty in determining whether the process in their hands could be executed or not. The time is differently fixed in different states, where they do specify the time, from two days to fifteen days.

MR. CALDWELL. I would submit to the chairman of the committee whether there is any necessity at all for this provision. I understand, sir, for myself, that all cases of treason, felony and breaches of the peace are excepted; and on what other pleas a man can be arrested I cannot conceive unless it should be for debt. The Constitution of Virginia has abolished imprisonment for debt, and I hope this State will pursue the same course. I cannot see that there can be any case in which he can be arrested outside of the three specifications contained in this resolution.

MR. LAMB. The interpretation which has been given to this section has, I believe, been this: that they are privileged from the service of process within this time; but there is no constitutional provision to prevent imprisonment for debt. The legislature may alter that law. Then it would become necessary that they should be protected within a reasonable time before and after the session.

The section was adopted.

The twenty-seventh section was reported as follows:

"27. Senators and delegates shall receive for their services a compensation to be prescribed by law. No act changing the compensation shall affect members of the legislature then in office."

Mr. Soper offered the following as an amendment: insert after word "compensation" where it first occurs the words: "not exceeding three dollars a day during the session of the legislature, and also ten cents for every mile they shall travel in going to and returning from their place of meeting on the most direct route. The president of the senate and speaker of the house of delegates shall, respectively, receive an additional compensation of one dollar a day."

MR. VAN WINKLE. I had not anticipated this matter coming up here. I do not know that I am prepared to say what I would have desired to say on it; but I would suggest whether it is best. Circumstances may occur in which it would be necessary to make a change. There may be a change in the prices of things. We have had such fluctuations before now. I should think, upon the whole, three dollars would be enough; but then the question is whether it should not be left to the legislature. I should be opposed to that feature which gives to the presiding officers so small an additional compensation; for their labor is really great. The office I think ought to be distinguished by something more than this. My own impression is, sir, that the matter had better be left to be prescribed by law, in which case I should be opposed to the amendment, although there are features of the amendment which I like if the Convention would act right.

MR. SOPER. I believe it to be desirable, sir, in putting in operation the Constitution we are about to form, we should be careful not to increase unnecessarily the expenses of the government of the State. And those expenses, so far as it relates to salaries we propose to interfere with and the compensation of the members of the legislature, I think we may at the beginning of it here ascertain if we can, the views of the Convention. Now, I believe that in western Virginia there can be no question but that three dollars is a large compensation, if we undertake to graduate the compensation beyond the amount that is paid in other states. Three dollars is perhaps a greater compensation than four would be at Richmond. Well, I believe, there are many states that do not give to exceed two dollars a day. I suppose, sir, that three dollars would be an ample compensation. Then the question arises: Is it necessary or is it advisable, that this Convention should limit the legislature in this respect. Well, now, sir, I think it is. When you call upon the legislature to fix the compensation you indirectly call upon them to do an act in which they have an interest. Many of them will consider that they have got a direct interest in it. Because I believe there are few men who go to the legislature who do not expect to be returned again; and I believe it would be advisable for every county in this State to select some man capable and competent, and keep him constantly representing them in the legislature. If that is so, sir, then I think this Convention had better fix the compensation. I apprehend there is not a gentleman here but what would say that three dollars is a sufficiently large sum. Another objection intimated is this, sir, that the presiding officers of the two houses ought to receive more than addition of one-fourth. I am not very particular about it, sir. I believe there are some states that give an increase of one-fourth. If there is a difference of opinion on that subject, I would have no objection to make one-half. Not very tenacious on that subject. Yet I think there ought to be a limit to it, and I am satisfied, sir, that double the compensation is too much. Aside from the fact that a presiding officer is required to be constantly in attendance, his duties are not very arduous; and he is relieved entirely from duties on committees; so that I have satisfied myself, sir, that one dollar in addition would be a sufficient compensation. I would, however, divide the amendment and see if there is a difference of opinion among gentlemen as to the compensation that the amendment now proposes to the presiding officers. I propose, sir, to take, first, whether we will limit the legislature in fixing the compensation of their own members; then secondly as to the compensation of the presiding officers.

MR. VAN WINKLE. Will the Clerk report the amendment again.

Mr. Soper's motion was reported by the Secretary.

MR. LAMB. I may repeat the remark I made in reference to this subject this morning, that the Constitution is intended to be permanent. We interpose all the difficulties we can in the way of frequent changes or amendments of that Constitution. Then can we undertake to fix permanently the proper per diem for members of the legislature? Had we not better leave it to future legislatures acting under the state of things which may exist at some day in the future to regulate the matter according to what then may be proper? This was the view the Committee on the Legislative Department took in regard to the subject. At the same time I am willing to express my own opinion. For the present, four dollars per day is perhaps too high. I find that there are but two states, according to my examination of these states—there are but two states in the country where the per diem is above three dollars. One of these is Virginia—three states: Virginia, Tennessee and Louisiana, I believe. But I think this is a matter which could be properly left within the sphere of the legislature. It seemed difficult for us to say at present what might be proper in this respect for all time to come.

MR. POMEROY. There is one thing I desire to say: that some members of the present legislature have expressed a desire that this matter be fixed by the Convention and not left to the legislature. My own opinion is that this amendment—as divided, at least—the first part of it now before us ought to be adopted. I think that is found in the past history of the country, that there has been no difficulty whatever in the different states of this Union, nearly all of them having a less amount than what has been paid in the State of Virginia heretofore, in getting suitable men to represent them. We have never heard of any complaint coming from any of the adjoining states of a want of candidates for the legislature. There has been complaint about the multiplicity of candidates, but none about the fewness of the number that were willing to represent the people. I think three dollars a day is a fair compensation, that it will reward a man for leaving his business at home to attend to the interests of the people in that capacity; that the honor that is attached to it in connection with the pay will always secure competent men, and that is all we desire. All we want in our legislators is that they be honest and capable, faithful to the trust reposed in them. I believe in every county included within the bounds of the new State, there will be no difficulty on this point. There will be an abundance of candidates who will be willing to serve the people for the compensation that is proposed in this amendment. And as I have already intimated this constitution is to be submitted to vote of the people. I tell you the people are in favor of as little taxation as possible. They are in favor of keeping down taxation; and the history of all the commonwealths around about us proves that there is great danger of being burdened with taxation. And I think there is no necessity for making this higher; and I do not know that any member wishes it to be higher than the proposed amendment; but I think we had better settle this and let it go out to the people in the Constitution itself. There is a great number of states that do do it and I think we are just as competent to settle this matter, with all due respect to the legislature, as they are. It is a plain matter whether this is a sufficient amount or not, if we believe we ought to settle the matter here at this time. And we certainly are competent to decide what is our opinion, at least whether that is enough or not. There may be men who would not wish to serve in this capacity; but there would be others who will; and I have no doubt there will be a sufficient number of men found in the limits of the new State that will be well qualified and will discharge the duties for this amount. And you will find even the smallest number multiplied by three is a considerable expense. When you take all the members of the two houses and all the other officers, and all the other necessary expenses, it is a large amount of money that is expended every day that the legislature will be in session. We will be a new State just commencing. Her history is to be written hereafter; and I am in favor of commencing so that we will promote the interests of the people and be able to back on our action and say we did right. But I am in favor of the amendment of the gentleman from Tyler for to say three dollars a day.

MR. BROWN of Kanawha. On the question of amount I should have no objection to the amendment. I think three dollars is ample to pay the expense, and that is all that ought to be paid for. I do not think the legislature ought to be made a money-making machine at any time, and if it were, why it would be a very poor affair at three dollars a day, or even four. The only difficulty in my mind is the propriety of departing from the principle of leaving the question to the legislature. I think the probability is the legislature would adopt the amount proposed—perhaps less. They, however, always have an opportunity of judging of the per diem by the circumstances that surround the occasion, and the time; and it has been changed from time to time. We fix the amount in the Constitution say on a state of things that today would be proper and tomorrow it may be improper. It seems to me therefore it is greater wisdom to leave that to the discretion of the people's representatives; for I assure you, the tendency being to hold parties to rigid economy, their representatives will be sure to pay at a low price. With that view I would be opposed to the amendment, unless it were so provided that it might be indicated in the Constitution, but that the legislature might alter and change it as circumstances might hereafter require. I hope we are making a constitution to last beyond our own lives, and that we may not have to tear up the Constitution on the per diem of the members.

MR. VAN WINKLE. I move to strike out "one dollar" and insert "two dollars" in order that the whole question may be before the house; two dollars additional compensation to the presiding officers of the two houses, in order that that matter may be before the Convention also. I am almost convinced by some of the arguments I have heard that there is no danger of the legislature making it too big but that they will make it too little.

MR. SOPER. I think, sir, the motion of the gentleman from Wood is not in order at the present time, as I have asked to have my amendment divided and the question now is on fixing the pay of the members.

MR. VAN WINKLE. I forgot; I did not mean to make the motion now but only to give notice of my intention to move that amendment at the proper time.

THE PRESIDING OFFICER. The question is on the first part of the amendment.

The Secretary reported Mr. Soper's motion:

Insert after the word "compensation," the words "not exceeding three dollars a day during the session of the legislature and also ten cents for every mile they shall travel in going to and returning from their place of meeting on the most direct route."

The motion was agreed to.

Mr. Soper's second motion to amend was reported as follows:

Insert immediately following the language just adopted: "The president of the senate and speaker of the house shall respectively receive an additional compensation of one dollar a day."

MR. VAN WINKLE. Well, sir, I move to increase that to "two." I think the difference between the pay of the regular members and that of the presiding officers ought to be greater than the resolution makes it. The usual rule in Congress and in our own legislature has been to give these officers double pay. Now they are not only here during the time members are, but they have to supervise the minutes, sign bills, etc. Independent of that the offices are very responsible ones; and responsibilities ought always to be considered. Otherwise, you would put no higher value on the services of a man who presided over a deliberative body than the man who called the roll. It is not liable to be perverted or sought for, because it is not so easily obtained. But I think the distinction ought to be made: and the compensation I propose is not at all too great.

The motion made by Mr. Van Winkle was agreed to; and the amendment thus amended was adopted; as was also the section so amended.

The twenty-eighth section was reported:

"28. Bills and resolutions may originate in either branch, to be approved, amended or rejected by the other."

MR. LAMB. Mr. President, the only question in reference to this clause would be whether revenue bills should be confined to the house of delegates. I presume there is but little difficulty on that subject. This is the plan which has always heretofore been followed in this State, although a number of states (I see) confine the origination of revenue bills to the lower house.

I move the adoption of the section as it stands.

MR. BROWN of Kanawha. I move to amend this to make it read that bills and resolutions may originate in the lower house only. I will not confine myself now to the precise language, for I have not time to digest it. The idea is this: In the consideration of this subject I have come to a conclusion different from that which I had when this subject was before the committee; that it is wholly unnecessary to allow both houses to originate bills, and that in reality it is a great nuisance. The tendency of our legislation is to adopt that which is hasty, ill digested and crude; and the object of the senate ought to be very greatly and mainly to revise, supervise, correct and digest the legislation of the house; that the senate is chosen for and supposed to possess greater wisdom, greater experience, for a longer term, and selected by a larger constituency. Their very qualifications fit them for a supervising body. The house come immediately and directly from the people, are the representatives of the popular idea in the government. They will always be fresh with every matter that is prevalent in the land, and carry it into the legislative halls; and the great duty of the senate will be to restrain that, to prune, correct and render it systematical and reject that which is crude. There is another evil where the senate and house are both originating bills: it is a continual crop-current of bills going to both houses, legislating on the same thing at the same time—time wasted—instead of both proceeding in their own sphere upon the same thing, because not a step is made. But both houses upon the same thing originating a bill, the house bill passes up from the house to the senate, and the senate bill at the same time comes down to the house, to be there considered and reenacted there. It causes double committee work, double printing, a double set of bills on almost every topic that is the subject of legislation, and instead of having time for deliberation, all matters that originate in one house going to the other to be examined there, both houses are in this crude state manufacturing material for the other to digest in as equally hurried a condition. The expense of legislation, the slow progress of it, and the crude ill-digested character of it, all arise in a great degree out of this very fact, that the senate is made an originating body instead of a purely revising body. Now, sir, the senate of Virginia until the Constitution of 1850 never had the power of originating bills. The whole life of this commonwealth has been one in which its experience has shown the propriety of giving to the senate the character of a revising body only. It was a new move introduced into our constitution in 1850, and I think the impolicy of it has been manifested in the action of the bodies. It is true the senate of the United States has power to originate bills; but the Constitution has not entrusted them with the origination of money bills. They must come from the representatives of the people, to pass up and go on to the senate and then return. I am therefore decidedly in favor of changing the character of this article of the Constitution to allow the house the right to originate bills and the senate the duty of revising and correcting them, and I will propose an amendment embracing the idea.

THE PRESIDING OFFICER. Will the gentleman prepare his amendment in writing and hand it in?

MR. VAN WINKLE. Mr. President, I am utterly unable, sir, to see any reason why this distinction should be made between the two houses of a state legislature; and I am particularly unable to see the reason why if you even made the distinction as they do in the senate of the United States, as to money bills, that there should be any reason whatever that would apply to other bills. My recollection of the character of the senate of Virginia under the old arrangement is not such as would warrant any return to that system. It certainly always was the inferior of the house, and the very idea of a senate is that it should be the superior, the conservative house. From the very fact that there was no power in the senate to do anything, that it was a mere council of revision on the action of the lower house, this body fell into disrepute; and that was one reason why the change was then made, an effort to raise the character of the senate.

But, sir, let us look at this about money bills and see if there is any reason existing with us as there does in the United States Government, and in the government of England where it originated. In England the upper house of Parliament is composed of the lords, of the aristocracy, of the peers of the realm, as they are called; and the people there very properly retain the right to originate money bills only in their house because the aristocracy is already powerful and is, to a certain extent, perhaps, exempt from taxation; and the people of England thought that they held in their hands a control over the aristocracy and the crown by retaining in the people's house, or house of commons, the right to give or to withhold supplies. By their constitution (although their constitution is not a written one, I think) no appropriation there can be made either for the army or navy for more than two years. That is another weapon the people retain in their hands by way of protecting themselves against the encroachments of the crown and nobility. There is a very good reason for it.

Well, then, to come to the United States; in framing that government, although we had not the nobility, yet our national senate was made a very distinct body from the house. The house of representatives are the direct representatives of the people themselves. They are elected in districts, several in a state, and they do represent more directly the people. But according to the theory of our government the senators are representatives of the states. Not only that, but each state has two senators. The representation in the senate is not proportioned to the number of the people. There might be a reason also why money bills should originate only in the lower house, that the people should retain the right to say in the first place whether the money should be appropriated for given objects. They still had the right—either house—to reject, of course; but they claimed that right—they thought there was safety in it—in England, and it was copied in this country, of originating as well. Because if a bill did originate even in the house of lords of England, or in the senate of the United States, that bill had to pass the lower house before it became a law. I cannot see clearly that the power of originating bills in that case was so great a safeguard as it is represented by their historians to be. That, however, is the true reason of this, I believe, and the states in making their constitutions seem to have followed the provision blindly, for it is very evident that the same reasons do not exist between the different branches of the state legislatures. The numbers of the senate bear the proportion as those of the lower house to the whole numbers of the people. They are as directly the representatives of the people as the lower house; and I cannot see that any reason can be found in the Constitution of the two bodies for withholding from one a power that is given to the other. The originating of a bill, sir, of course does not pass it. Now whether there would be more wisdom in framing a bill in one house than the other is very questionable, indeed. Those things are generally done by considerable skill. Many bills are framed by the government itself. Perhaps in England the idea may have been to prevent the too great influence of the administration, the government itself being exercised through the house of lords, by the bills being in fact prepared, as I believe many of the bills most usually are, in the office of the secretary of the treasury—that is to say, the appropriation bills. Anybody may know that whoever looked over an appropriation bill of the United States. No man, unless he is entirely familiar with all the operations of the government could prepare such a bill. If the bill is not drawn into form the estimates must be furnished directly from the Treasury Department. But I do not see how these reasons apply here; and if they do not, then I am not in favor of hampering the legislature with restrictions that cannot be shown to be really of importance. What safeguard there would be to the people in changing this by restricting one house in the origination of bills, I cannot conceive. And I do not think what has been said by the gentleman from Kanawha, even if it is true to the full extent that legislation is injured by it—even if that was true, I do not think it is a sufficient reason. We might, perhaps, if we choose, go to work and throw in several features intended to make the legislature more free. Well, we have been doing it in a different way; but I think, sir, we will find ourselves getting too much business on our hands if we are going to really attempt to correct the perversities of human nature. We cannot do it, sir, because we cannot foresee them. My own opinion is, always has been, that the senate should be constructed in some way as I have expressed it on this floor, that if we could construct it in such way that it would look at things from a different point of view, so that different interests would come into play, from the other house, if there should be that difference in the two houses that the thing would be sure to be looked at in all points of view, or nearly so, that then I could see why there was a reason even for having two houses. But do the best we can to carry out the views that were spoken of at that time in reference to the constitution of the two houses, we cannot get that real diversity that exists in the two houses of parliament or the two houses of Congress. There the difference is fundamental and is no doubt a great safeguard in the legislation of those bodies. I cannot, sir, bring my mind to see or be convinced that there is any safety, or any business, even, that is to be promoted by taking away from the senate the power to originate bills. I apprehend that business instead of being kept back would rather be forwarded. Because, if a bill is perfected to a certain extent in one house—might be a better one than a similar bill in the other—the usual way is to substitute that which is most agreeable to the members for the other. Again, in a press of business, both houses may be at work originating business. Persons who go there for legislation, the friends of a measure, will originate it in one house or the other, as they think will best forward it. After all every member of each house is called in to vote upon it; and I am not sure, sir, whether upon the whole, it might delay business in the way the gentleman has spoken of or might not expedite business in the way that I have alluded to. But the matter seems rather far off and uncertain. It is a mere inference what effect it would have. With men of one stamp it might have a dilatory effect; with men of another stamp it might have a contrary effect.

I am, therefore, in favor of the provision as it stands in the report of the committee.

The Secretary reported the amendment moved by Mr. Brown of Kanawha to strike out all the section after the word "resolutions" and substitute: "shall originate in the house of delegates, to be approved, amended or rejected by the senate."

MR. LAMB. I am opposed to trying this experiment. I find that in not a single state of the Union is the senate deprived of the power of originating bills. If we adopt a provision of the kind, it is an experiment of our own. Except that some states require that the revenue bills originate in the lower house, there is no restriction in a single state of this Union on the power of the senate to originate bills. To the unanimous verdict of our sister states I am disposed to attribute a good deal of weight in a case of this kind. The very fact that has been mentioned by the gentleman —and I believe it is a fact that formerly in Virginia the senate was deprived of the power of originating bills, is not an argument for the amendment; for we find this did not operate well. They changed the Constitution in that respect. So far from saving time, the probabilities are that it would lose time. You restrict your legislature to forty-five days. What can the senate have to do during the early period of the session? What business have you provided for them? They can originate nothing, and can act upon nothing until it is sent there by the house. They must necessarily, it seems to me, at the commencement of their session, merely meet and adjourn. Instead of facilitating and expediting business, which would probably be the result I think of allowing each house to engage at once in its proper business, letting the matter be arranged, as it can be very readily arranged between the two that one shall take up this subject and the other that, you bring matters forward much faster and terminate the session much sooner. Another objection would have great weight with me. If you deprive the senate of the power of originating bills, you deprive that body of all weight in the legislative system; and directly you will have the opinion go forth among the people that the senate itself may as well be dispensed with.

It strikes me, gentlemen, that we had better adhere in this matter to the landmarks that are before us.

MR. BROWN of Kanawha. I do not wish to trouble the house with many speeches, but it seems to me the argument of the gentleman last on the floor does not hold together. The experience of the world, it seems to me, has taught the value of the higher, or conservative legislative body. The British House of Lords has never been regarded as so inconsiderable and unimportant a body as might be dispensed with; nor the Senate of the United States, so far as many bills are concerned. Nor was the senate of Virginia; so far as my knowledge of the history of the country goes ever supposed to be so before the Constitution of 1850, with which there has been a universal quarrel almost ever since it was adopted. And, now, sir, I have no doubt if you could put the question today to the people of this whole commonwealth whether they would readopt the old Constitution of '29-'30, or this of '50, they would take the former. I have heard it all over the country that if the two were presented there is no hesitation about which they would choose—so bitter has been the hostility, and that was one of the most distinctive changes. The real object of this is what is to be attained by it. The gentleman thinks one house would have nothing to do while the other was getting business ready. Now what is gained by setting both to work on the same bill in the two different houses. Why it has to pass both houses; and while both houses are at work on one bill of the same character you do not facilitate business in the least. And that is the case. If any gentleman will look at the ordinary legislation of the country you will find bills originating in both houses, of the same thing, and there are about double as many bills printed as necessary, because each has its bill while the other is at work on the same subject. And I shall put the question now to this Convention: suppose the very time we are at work here there were another house that was to have coordinate jurisdiction, and their assent was necessary to every measure we should adopt; and when we are at work on this report they were at work on another report, and just as fast as we adopted a provision an amendment comes in from the other house on the same subject, and you will stop and reenact and reconsider and adjust all that that body has done in opposition to what your body is doing. Now these are the difficulties existing with two houses working on the same subject at the same time; whereas if one house could have its action in some form and the other could receive and adjust it and put it into form, much more actual progress would result. So far as experience goes, I only beg leave to say that I have conversed with several gentlemen of very considerable experience in legislative life, some in my own county, who have been members of the legislature long before this constitution of 1850 was adopted and many years under it, who gave it as their unqualified testimony that the power of originating bills with a double operation in the two houses was a nuisance, an inconvenience, and resulted really in an injury and delay to the legislation of the country; and it were far better that the senate was a revising body to supervise the action of the house. It gives more time, and what is done is done more deliberately and more properly.

I therefore shall insist on my proposition.

MR. LAMB. I merely want to make a single remark: that if legislation is arranged in the manner in which the gentleman from Kanawha seems to suppose it is, there is certainly very little skill in the bodies which have the management of it. I have always supposed that those bodies arranged among themselves, through the means of their committees or otherwise, that while one house took up one subject, the other would act on another. I have always understood that this was the ordinary course in legislation that would be taken among all well regulated legislatures; that there is an understanding among themselves that this subject will be acted on first by the senate and that subject by the house, and that each prepared their different bills and sent them to the other. It may be, if the matter gets into the confused sort of "muss" that the gentleman has called to the attention of this Convention; but it is very easy to regulate that. It is easy to have an understanding. If the senate are about introducing a bill on a matter that is already before the house, it is easy to have an understanding with them to let that matter alone until the bill comes from the house. In this manner you have two different parties at work, each engaged in facilitating the business, and which certainly can be done in a much shorter time than if all bills were to originate in one house only and the other had to wait merely to revise what the other had prepared.

MR. SOPER. I believe the section as reported, sir, is the true one. I believe it has a tendency to expedite business instead of retarding it. It is an undeniable truth, sir, until the lower house matures and puts them on their passage, during that time the senate would remain unoccupied nearly the whole time. If the bill is introduced into the senate and passed and sent to the lower house, there it receives its reference to the appropriate committee. If the committee has got the subject before them, they have the benefit of the views of the other house on the same question and it enables them, probably, to decide more easily and correctly on the matter before them. If the lower house has reported its bill and it has been referred to the committee of the whole, the bill comes from the senate to the house committee, it is reported immediately to the committee of the whole when they have got that matter under consideration, and there, sir, in committee of the whole they have the views of the senate on the same subject matter as well as of the house; and I believe, sir, it has a great tendency to facilitate business. There is one point of view in which it is beneficial: the house is the large number; and in those large bodies matters proceed much slower than before a smaller body. So that if the senate acts upon it in the first instance and sends the bill down to the house it facilitates and expedites the whole subject matter of legislation on that particular subject. And on the score of expense, extra printing, etc., the senate sitting a single day, sir, if you please, unoccupied, their compensation would outstrip everything that this extra printing suggested.

I believe, sir, in every point of view, that this is a wholesome regulation, giving both those houses the power of originating bills. It can work no injury and will have a great tendency to facilitate every matter of this description.

I am, therefore, sir, opposed to the amendment.

MR. VAN WINKLE. I should like to ask a single question: whether it is at all probable that the friends of a measure, who, of course, would be anxious to pass it—are likely to embarrass that by originating it in both houses: whether they are going to have these diverse bills pending there. Now, every measure of importance always has its friends. Where a measure assumes political importance, of course, one party is favorable to and the other opposed to it. It is those who originate it and who are, in ordinary bodies allowed to perfect it before the trial question is passed upon. Now, is it at all probable that the friends of a measure, whether it be a private bill or public, would be likely to embarrass it by having bills originate in both houses of a different character? And if not, there is no need of more than one.

MR. BROWN of Kanawha. The gentleman from Ohio predicates his view on what he had supposed to be the regulations of different bodies. Now "the proof of the pudding is in chewing the bag," as the old saying is—and it is a very good one. However, maybe our understanding, sir, or suppositions, the facts really were not so. If we are to take our present legislature I know that bills are originating in both houses continually on the same subject and passing and repassing; and whether they be public or private bills, prepared by friends of the measure or not, the fact exists and therefore the presumption of the gentleman from Wood does not hold good. Whether it is the inexperience of those gentlemen I cannot say; but I presume they are like all other legislatures: each man takes his own course, and each house has its own notions and is a little headstrong and goes ahead without asking anybody's advice. But these are evils that may be remedied by the mode proposed. The good I have not been able to see as yet, nor have I seen it in the arguments of the gentlemen from the other side, so far as I have listened to them and ascertained their meaning.

The question was taken and the amendment rejected.

The section as reported was adopted.

The next section was reported and adopted, as follows:

"29. No bill shall become a law until it has been fully and distinctly read, on three different days, in each branch; unless in cases of urgency, three-fourths of the members present dispense with this rule."

The thirtieth section was reported:

"30. No law shall embrace more than one object, which shall be expressed in its title."

MR. IRVINE. I move to strike out the thirtieth section. This section embraces a very good general principle, but it is important that there should be some exceptions to it. It is very inconvenient for the legislature to conform to this law. The legislature never has conformed to it. It is frequently the case that there are two great objects so connected with each offer, and so dependent upon each other that it is impossible, almost, to separate them, at least very inconvenient. This provision was introduced into the Constitution of Virginia in 1852, I think for the first time. I do not think any such provision existed in any prior constitution. Since that time this provision has frequently been violated by the Virginia legislature; and it is calculated to embarrass the legislature. It is frequently a difficult matter to decide whether a particular bill would be a violation of this provision. A great many laws have already been passed in violation of this provision since it was first introduced into the constitution in 1851. Now it may become a fruitful source of litigation. I suppose any law that has been passed that violates this provision is null and void. Even the legislature which sat here in Wheeling last summer passed at least one law, if not more, that violated this provision. The legislature in Richmond has frequently violated this provision; and I suppose all the laws that have been enacted in violation of it are null and void. It is a very good general principle. The legislature ought to be governed by it as far as is convenient and practicable; but when it becomes inconvenient, no such restriction ought to be imposed upon the legislature in the exercise of a sound discretion on this subject. With this view, I move to strike out that section.

MR. LAMB. Mr. President, I merely want to make an explanation in regard to what I presume to be the main object to be accomplished by this provision. The prior section which has just been adopted provides that no bill shall become a law until it has been distinctly read three different days in each branch. Now, it has been (so I have read) too much the practice in legislatures where such a provision has not existed in the constitution, especially towards the heel of the session, when business was pressing, to tack on as amendments bills embracing distinct subjects and thus get them through without proper attention to the subject and in violation of the provision that every bill to be distinctly read on three different days. I recollect at one time to have heard of a great difficulty that was raised in Pennsylvania in regard to some very important bill that was tacked on to a private bill in this way and passed through the legislature without their knowing anything about what they had done.

MR. VAN WINKLE. Connellsville Railroad.

MR. LAMB. Well, there were others of the same character.

If you strike out this provision, you can towards the heel of a session, take any bill, whether important or not, and make it an omnibus to carry through all sorts of schemes, tacking them on as amendments. I beg leave to say in behalf of the legislative committee that they have attempted very few experiments of their own—none, we may say, in the report which they have made. This same provision will be found in the constitutions of many other states—of New York, Ohio, Indiana and at least a dozen more. It may occasion some inconvenience at times, it is true, but do we not run a greater risk on the other side? What would become of the difficulty of making towards the end of the session, any bill that may have progressed towards its final stage an omnibus to carry along everything—what becomes, if you strike this out of the provisions which you adopt in your Constitution to require that every bill that goes through the legislature shall be carefully and deliberately considered? That they shall be read on three different days. But I have no experience in legislation, and they may be evaded at least by tacking on different subjects that have no necessary connection with each other as amendments to some bill that is going through.

MR. VAN WINKLE. There is a great deal of force in the remarks of both the gentlemen. I concur pretty nearly in every remark made by the gentleman from Lewis, except perhaps as to the effect of embracing different things in the same bill. I should hesitate to say that the law would become a nullity, or rather that the court would pronounce it a nullity. And yet it would be an infraction of a constitutional provision; but I suppose the courts would construe it as directory and so save the law. The abuses that have been committed in legislation in the way the gentleman from Ohio has indicated where this railroad was slipped through; I think both houses of the Pennsylvania legislature attached to a private bill a bill authorizing this road to be made to Connellsville with a view of reaching the state line in the direction of Baltimore; was one of them; but it seems to me it indicated a degree of gross carelessness on the part of the members, and I think several from Pittsburgh or some other portion of the state lost their seats in consequence of it.

After listening to the gentlemen, I drew up this. I do not know whether I will offer it at this time as a substitute:

"No amendment having a different object shall be attached to a pending bill after a second reading."

I think, sir, that might meet the objection and prevent that difficulty which the gentleman from Lewis has so well described. There are such shades of difference between two objects that a thing in the estimation, sometimes, of one mind will be entirely pertinent when in the estimation of another mind it will seem to have nothing to do with the subject. I think, sir, on the whole I will offer that as a substitute, and I should like to hear the views of members upon it, whether that would meet the case. I drew it here hastily.

MR. BROWN of Kanawha. Mr. President, I would ask the Secretary to please read that amendment.

The Secretary read:

"No amendment having a different object shall be attached to a pending bill after its second reading."

MR. BROWN of Kanawha. That is proposed as an amendment?

MR. VAN WINKLE. If the gentleman will permit, I have this idea in that: that if the house, deliberately, on the second reading or previous to it if a committee reports, choose to adopt a bill having two objects in it, if they allow a provision or amendment having a different object to come in up to the second reading of the bill, then it is done with deliberation and is the intention of the house and the element of haste and possible oversight is excluded. But this hasty or fraudulent legislation which the gentleman from Ohio has alluded to and which must be done on the third reading is prevented. That is my view.

MR. BROWN of Kanawha. I confess, sir, the substitute offered by the gentleman is preferable to striking out the other altogether. But still I think the provision as it stands in the report is preferable to either. Now, to my mind it is not the only objection that an amendment may clandestinely or carelessly be attached to a bill on its passage and thus become a law without the proper consideration of the whole house; but there are evils or complications resulting from thus loading on this one subject a half dozen others and thus bringing to the whole the strength of each and carrying through that which cannot stand on its own legs by itself a minute. That is a great evil. There is another evil. There is a case that occurred in our own state to which I will allude. Some years ago there was a bridge across Gauley river and it was burned down by some incendiary. The legislature of Virginia in legislating on the subject of that offence, or the rebuilding of another, or some provision about it—but the subject of Gauley bridge was under consideration, and in the act relating to that subject, was attached an amendment or a bill which was passed through together and may be found under the head of "Gauley Bridge," on the subject of delinquent lands and taxes on them. Now the subjects are so entirely apart from all relationship or connection that one would be surprised ever to think of hunting for one under that head. This is only an instance that occurs to my mind of the diverse nature of subjects that may be crammed together under the pressure of circumstances. But it may be that individuals pressing for the bridge subject were willing to submit to anything that was crowded upon them in order to obtain that and thus carry through the whole, which if considered as a bill singly might not have stood. Now, the object of this provision in the Constitution is to prevent that kind of legislation. I confess I have not a distinctive determination of what would be the effect of a violation; whether the courts would consider this directory, and that they would violate their oaths and duty to pass such legislation, yet the law might be permitted to stand. I am not permitted to answer that question. No such case has ever yet arisen before our courts; and I must confess, while we had this constitution in operation now, sir, some eleven years, I do not remember any distinct recognized case of a violation of that provision of the constitution. Very certain it is that however many times it may have been violated, the tendency is to prevent the legislature from passing that crude legislation, and that is the great object to be attained. You will not have ten instances with it in the Constitution where you would have a hundred instances without it. The propriety, therefore, of the provision is indicated by the adoption of it in so many constitutions in other states as well as our own. Seems to me the reasons that arise naturally require us to retain it.

MR. SOPER. Mr. President, this section in the constitutions of the different states is a recent provision, and it originated out of this hasty legislation generally perpetrated at the close of the session. The friends of a bill, doubtful whether it will pass if properly investigated, in order to make friends for it, would receive amendments and accept of them, and then again in the engrossing, and for the want of attention on the part of members in the reading of bills. Provisions have been found in former days to be contained in the same bill which were directly at variance with each other; and from its title you would not suppose that the body of that bill contained anything like what would be found in it. Frauds of that kind, sir, led to this provision in state constitutions. I believe it is a very salutary one. To obviate the difficulties of the gentleman from Lewis all that is required is in the first instance for the friends of the bill to look at it carefully and cautiously and have it so worded as not to contain two subjects, and if there is doubt upon it to let an additional bill be introduced. It is very easy, sir, to give full effect to this section as reported. It is very easy to give full effect to it and, at the same time prevent any of the evils which the gentleman who raises the amendment has endeavored to guard against. Now, sir, at the heel of a session where the house is probably in session until midnight and perhaps after that, when every member is anxious to get his bill read, the title of the bill is announced when other members have their attention called to their own business, not paying particular attention to the reading of the bill by the clerk—why, sir, those instances which have been mentioned by gentlemen that have addressed the Convention upon this amendment have crept in, sometimes designedly, sometimes inadvertently, sometimes in consequence of a want of proper attention on the part of members of the legislature. But so it would turn out on the close of the session, when the bill came to be read and examined it would contain matters entirely at variance with what its title purported. I am satisfied the greater safety is to retain the section as it now reads. The amendment proposed by the gentleman from Wood may be considered as a safeguard. Yet, sir, I believe if the section is left as it is it will require every gentleman in the legislature who has got charge of subject matter to be enacted into law, that he will be careful to obviate this constitutional objection; and then whether there be a hurry at any time in the legislature, whether members while hearing the title of a bill as it is read pay very little attention to its details or not, no evil can result if it is carefully guarded by its friends at its inception. So that I believe the better way is to retain the section as reported.

The question was taken on the amendment, which was rejected, and the section was adopted as reported by the committee.

Section thirty-one was reported as follows:

"31. On the passage of every bill, the vote shall be taken by yeas and nays, and be entered on the journal; and no bill shall be passed by either branch without the affirmative vote of a majority of the members elected thereto."

MR. VAN WINKLE. I move to insert there: "On every bill appropriating or requiring the expenditure of money, the vote shall be taken by the yeas and nays." I have seen them pass a dozen bills in three minutes and nobody would think it worth while to call the yeas and nays.

MR. BROWN of Kanawha. I am opposed to that amendment for the reason assigned by the gentleman from Wood who made the motion that bills are passed three or four in a minute and that nobody knows what is in them. A representative of the people when bills are on the final passage ought to have his name called and put it down. If there is any time when deliberation is proper that is the time. We very often see the ayes and noes called to bring members to a test, or to suit the caprice of some individual, or for some party or political purpose, or something of that sort; but here it ought to be a permanent provision that upon the final passage of every bill, whether many or otherwise, every man who votes for or against should put it down in black and white. I, therefore, am opposed to confining this to money bills and shall vote for the section as it stands.

MR. LAMB. The provision reported by the committee, as adopted, as applicable to all the bills, is found in the constitutions of many of the states. The Constitution of Ohio provides that "on the passage of every bill in either house the vote shall be taken by yeas and nays and entered on the journal; and no law shall be passed in either house without the concurrence of a majority of all the members elected thereto." The Constitution of New York has a similar provision: "No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question on the final passage shall be taken immediately on its last reading and the yeas and nays entered in the journal." The object of the provision is just to correct the practice which was referred to by the gentleman from Wood, this thing of passing a dozen bills in a few minutes, when half the members perhaps do not know what is going on before the legislature. The adoption of such a provision would render it absolutely necessary that members should attend to what is going on, for it requires a majority of all the members to pass a bill and they must vote by ayes and noes upon it. It may not be possible under such a system to pass bills so expeditiously but at least we will have every security that members will know what is passing. I read the provisions of two constitutions of other states: I may remark that the same is found in many of the other state constitutions—over a dozen, I believe, at least.

The Secretary reported Mr. Van Winkle's amendment: To insert after "bill" the words "appropriating or requiring the expenditure of money."

The question was taken and the amendment rejected.

MR. VAN WINKLE. Well, sir, I move now to strike out the residue of the section. It seems to me that is carrying the joke a little too far. You do not have at all times anything like a majority and you are requiring a vote of two-thirds of those present. It is unfair to the friends of a bill, and you enable perhaps one-third of the whole legislature to defeat a bill at almost any time simply by absenting themselves.

I was going to move, sir, if the other amendment had been adopted to insert the word "such" so as to make this applicable to money bills—because that is the important matter. Bills in reference to internal improvements, creating a debt, ought to have that safeguard. But I do not consider it necessary in the case of every little bill that comes up. Here is a bill, maybe, to incorporate a cemetery company, which needs the aid of the legislature and at the same time is of no great public importance either way; merely asking the legislature to do what is usual; and yet if there should be a slim house, one more than a majority, why, of course, the bill must be defeated if one or two men choose to oppose it; and they may do it out of ill nature. It seems to me while we should be anxious to prevent abuses, we may render legislation itself almost a nullity or a useless thing; and then the same subject must be brought up again and again before another session; because there are very few members who would not have the courtesy under such circumstances to give it a reconsideration.

Now, the difference is that if this is stricken out a majority of those present can pass a bill. If this is retained, no bill, however simple in its provisions, however unimportant to the public at large, can pass unless a majority of the whole number of members elected to each house is attached to it, and that can seldom be had in a thin house. The probabilities are very much against getting a constitutional majority for any bill. If, however, a more important bill, like that creating a debt is known to be pending, members will try to be there to vote their sentiments according as they may be; whether for or against; but it would delay legislation to deny that legislation for a reason which it seems to me ought not to stand in the way. If those who are absent are so without any particular object in being absent then a majority of those present represent a majority of the whole house, for it will be inferred that a similar number of both sides have gone away. On a grave bill, it would be just and right that you should have a majority of all the members, so that if the people are saddled with a debt you should know it was done by the representatives of the whole people. But sickness and accidents will occur, business engagements, members drawn constantly away from these public bodies, sometimes on leave of absence and sometimes not; and yet you run the risk of defeating about one-half the bills that are proposed.

MR. BROWN of Kanawha. So far as I am concerned, it seems to me the arguments presented by the gentleman in favor of requiring a full majority to pass money bills completely answer those he has made in favor of a different rule for other bills; because there are other bills as important as money bills. It is a great mistake to suppose that money is the only thing important in public legislation. When you are legislating on the lives and fortunes of a public and the laws that control their liberties, it is of as high importance as a few dollars; and the very thing that the gentleman acknowledges by the force of his argument requires not only that the ayes and noes be called but that a majority of the whole legislature vote in the affirmative to enact any law. They are equally demanded on other questions as on money bills, which are really less important than many other subjects of legislation, so that he must extend the same argument to the others. Upon the very question of importance, and because there are mixed up with legislation some unimportant matters, it would be very unwise to discriminate as to what is important and what unimportant. Make a general rule; provide for the whole legislation. The only difficulty in the way of the gentleman is that so many will be absent. Now if there is any force in the argument it is that we are to insert a provision in this Constitution to alleviate the condition of the gentlemen who would be compelled, in the other state of the case to attend to their duties. Insert an amendment that permits the legislature to go on without their presence, then the persons whom they sent to dispose of and determine public business may be retiring on some other business. It is not to be expected that even one-fourth of the legislature will ever be absent from any good excuse or cause; for it must be an extraordinary state of things that would call away perhaps half the whole legislature. Ordinarily the absenteeism that is tolerated in the legislature would be prevented by this very provision. If bills come up to be defeated by the absence of any member without good excuse, he will be held to a responsibility before the public, and it will induce a stricter attention to duty on the part of members.

I, therefore, shall oppose this amendment.

MR. SOPER. I believe this is a very wholesome section. Whenever this order of business is reached every gentleman that has charge of a bill, in whichever house it may be, will make it a point to be there in attendance to take care of his own individual bills of which he has the supervision. And then, again, sir, where you require the yeas and nays to a bill to be entered on your journal, why members knowing that the matter will go before their constituents will be very careful to see what sort of a bill they give their vote to. It makes them more careful to examine and ascertain that there is nothing improper in the bill itself. Now, sir, the objection that I should have to the section is this: it does not go far enough, unless there are some other provisions to come before us that will obviate the difficulty. I mean now, sir, that class of legislation in which is embraced the creation of public debt, the appropriation of money, the incorporation of banks, insurance companies and railroad companies. Why, sir, I should be for having a provision here that not only a majority of all the members elected but an affirmative vote of two-thirds before ever I would be willing to have bills of this kind pass. Any gentleman that is conversant with the history of other states just on the subject of the creation of banks and the frauds that have been practiced—the "lobbying," the "logrolling," the contrivances of all kind in order to carry out these objects, profitable to the gentlemen that have got the control of them—they have all been resorted to, sir; and great frauds have been perpetrated and a great deal of very improper legislation has originated out of it. So that you will find, I think, sir, in a large number of constitutions—I now speak more particularly of New York—I know in many of those instances I have spoken of—it requires a two-thirds vote before the bill may pass.

I am for the section as it stands, and may yet before the close of this Convention take the sense of the Convention upon requiring for a certain class of bills two-thirds of the whole legislature.

MR. LAMB. I read one section of the Constitution of New York which requires that "no bill shall be passed unless by the assent of a majority of all the members elected to each branch." There is another provision in that constitution which provides that on the final passage in either house of the legislature of any act which proposes or makes, continues or revises any appropriation of trust money or property, or releases, discharges or commutes any claim on the domain of the State, the question shall be taken by yeas and nays, which shall be duly entered in the journal, and three-fifths of the members elected to either house shall in all cases be necessary to constitute a quorum thereof. I do not understand therefore that the Constitution of New York maintains in reference to the vote any other provision than that which requires a majority of all the members elected to pass any bill. Three-fifths must be present to constitute a quorum.

MR. SOPER. Are you reading from the constitution of 1846 or 1821?

MR. LAMB. The last one.

MR. SOPER. In the last Constitution there were general laws for the organization of these companies, but under the former, of 1830, I am confident that the two-thirds rule is contained in them. It is a great while since I examined it, but I speak now, sir, from recollection.

MR. LAMB. The Constitution of Indiana provides that "a majority of all the members elected to each house shall be necessary to pass any bill or joint resolution." Now, in all those states which have adopted this provision in their constitutions, we have not heard of this exceeding difficulty in passing their bills. On the contrary, our information would lead us to suppose that there is a sufficient quantity of legislation left in those several states. Perhaps in our own state there is a little too much legislation. I think that is the general impression of our people: that it is an evil that it is necessary in some measure to correct, and that it is necessary to provide in your Constitution that all possible care should be taken that bills are passed deliberately and with due examination; to provide as far as possible that when bills are under consideration they shall not be passed by a slim house; that the members attend to their duties to the last and that if they are absent, with a provision of this kind the yeas and nays should at least let the public know whether they have been attending to their duty in the passage of such and such bills or whether they have been attending to other matters. If the evils which are pointed out by the gentleman from Wood are really to be apprehended then it strikes me we should have heard of some of the difficulties existing in those states, which have had such constitutional provisions in operation for ten, fifteen or twenty years back, in getting the proper quantity of legislation. But I have never heard yet of any complaint of that kind in any state of the Union.

MR. POMEROY. I think the argument from one side would be about as strong as the other. I think a great many states have no such provisions as that proposed here, and some of them have, and I am not prepared to say how many have and how many have not. But it is to me very clear that there is provision of this kind in Congress. There is a difficulty presents itself to my mind. I suppose the Convention are disposed to favor this resolution as it is. Suppose a body is composed say of forty-six members and there are forty-five members present; twenty-three vote for the passage and twenty-two against. Why owing to the absence of a single member, the bill is lost. Suppose you even sent a sergeant-at-arms after this member, it is very likely against you could get this member in another is absent. It is very rare that the whole body is present. Now, we say this is more important than an ordinary session of the legislature, and we think we say so truthfully because we are fixing principles here that are to regulate the new State, if we get it through, for a long time; making something that we look upon as permanent. And yet what day in our session has there been a full vote recorded? Today some of our most highly respected and valuable members are absent. Even our President could not get here. Well, now, if you make it apply to all bills—I would be willing to adopt the suggestion of the gentleman from Tyler, to apply it where there would be matters of great importance. But what some of the people might regard as unimportant would be deemed very important by others. A bill regulating the road law of a particular county, would be very important to the members and the people particularly interested in it, and those members take advantage of that time when they think legislation is not of such grave importance to attend to something else outside the house. At the same time other bills of equal importance to other members are waiting to be passed, and cannot be passed at all unless there is a majority of all the members elected there to vote. This thing of men being absent is of general occurrence. It is so every day. It is so here and it is so in the legislature. The members are not all in their seats. They are not all there; and yet it requires them all at times to pass a measure. The body very often is nearly equally divided. In this body since we have assembled we have been a tie and the motions were lost. Well, now, a body may be very equally divided, and yet the majority cannot pass the bill because, simply, there is one or two men absent. In the case in which I have already cited, in a body of forty-six and one, two or three are absent the bill is not carried; or even if they are all present but a single man, why the vote is not carried. I think this provision is too sweeping in its provisions. I think you will waste more time and expend more money in endeavoring to pass bills with this provision than if it was somewhat modified and altered. It is a very rare thing to find a body of men of forty, fifty or sixty, all present in their seats. It is rare that they are all in the enjoyment of good health. I met one of our members today who said he was too unwell to be present. Now if we had the same regulation we could not pass anything unless we had a decided majority of the house. I think we ought not to make such a general provision as this.

MR. SOPER. One suggestion: the member having charge of the bill when it is called in that order of business, he either moves it or not; he knows whether the house is full or not; and if it is necessary he can proceed to a call of the house and get them there. Where every bill has got to be passed by this majority, every member who has charge of it is always in attendance under that order of business. So I think there is great safety in the section as it is.

MR. POMEROY. I cannot conceive the members would all take an interest in the bill.

MR. SOPER. They are their own bills.

MR. POMEROY. Yes, but he has the power to control the members? He would bring up the bill for discussion and when that discussion would commence the house might be full. He might be a good enough gentleman to watch them, but before the discussion would end the house might be gone—a great portion of them —and when the vote came to be taken he might not have his men there, and no power to keep them there; but they might look on it as important to the gentleman himself but not to them, and they might say: "I have got business elsewhere." The discussion might run on several days. Would he know just at what time to have his men present? How would he know that these men that were opposing the bill were exhausted of the argument they had in opposition to it? Why, if they were as wise as he, they would not stop there and wait until his friends would get out. I am told men are sometimes pretty cunning. They are about as cunning on one side as on the other. We find sometimes we can just whip the enemy because we have got everything prepared and when we get there we find that they have got everything prepared too!

MR. LAMB. I have no right to speak again on the subject. I merely want to correct a statement in reference to the gentleman from Tyler. There is a third provision in the Constitution of New York such as he indicated. It says: "The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to passage of every bill appropriating public money for local or private purposes."

MR. SINSEL. The gentleman from Hancock supposes a case where the house might consist of forty-six members, twenty-three of them voting for it, one absentee, and twenty-two against the bill. Now in a case of that kind that bill could not pass because twenty-three is not a majority of the whole house. Well now if a bill cannot receive a majority of the whole house present or not, is it entitled to very much respect? If there are twenty-three members voting for a bill and twenty-three against it, would it seem reasonable that it should become a law? Because if they represent the true feelings of their people the people would stand equally divided on this subject. I think such a bill should not become a law. In addition to that he only considers one side of the question. Now where a house consists of forty-six members, twenty-two of them may be absent, and yet any bill may be passed if the twenty-four remaining in their seats vote unanimously. Well then in addition to that, if there are twenty-four present, under the sort of provision the gentleman prefers, thirteen members might pass a bill. Well, now, would it be fair if such a provision should become a law. Suppose these members represented the true feelings of their constituents: here would be about one-fourth of the members passing a bill against the wishes, it might be of three-fourths. Well then, if anything will make members attend to their business, it does seem to me a provision of the kind reported there is the very one to do it. How often is it that members leave the house without any just cause, very frequently visiting drinking saloons, etc. Or a man might in some instances hold out inducements to a member to get him away at the time a certain bill would come up for passage, so it would be lost for want of his vote. So I think it is a safe provision.

MR. STEVENSON of Wood. I would like to ask the gentleman from Taylor what he meant by "etc." He said "drinking saloons, etc." (Laughter).

MR. SINSEL. Well, sir, I did not mean any reflections of course, on any members here.

MR. VAN WINKLE. I do not think the arguments we have heard here meet the case. I do not object to applying this provision to important bills. There you can rely on friends enough to pass the bill. But there is a multitude of legislation which many members unfortunately take no interest in. And when the lobbyists go to the seat of government, they always go to that class of people who are indifferent, and it is those on whom they operate. But there is a great deal of legislation that is important to the people, and yet it is almost impossible to carry any bill by this majority. There will be differences in the community—and there ought to be—and the will of the majority of the community ought to prevail; but the difficulty is here: If you would say that a bill should not be rejected unless a majority of both houses voted against it—if you could have a provision on both sides—this would be fair enough. But you give here to a minority—and less a great deal than an actual minority—you give to a minority of one-third say—the power to defeat a bill. Now, my idea is—I may be mistaken in it—from what I have heard spoken this afternoon, my idea is decidedly that we have the legislature for the purpose of passing bills, and it strikes me that this attempt to cripple and tie them up and prevent them from passing any bills, is very injudicious. You had better abolish them at once. There is legislation to be done every year, however much people may be opposed to "so much legislation," as they sneer. Those who oppose legislation so indiscriminately have very little idea what it is or the necessity for it. Legislation ought to be to some extent free, within suitable limits.

MR. LAMB. Excuse me for one moment. I have seen the difficulty the gentleman suggests arranged repeatedly, though I have had very little experience in legislation at Richmond. We have a provision in our Constitution which requires a majority of all the members elected to pass certain bills. I have seen a dozen bills coming under that provision of the constitution submitted to the different houses at Richmond, and not securing a majority of the whole immediately reconsidered and laid on the table until the next day when they could get a fuller house. It does not follow from this provision that a small number may reject peremptorily. That plan has been adopted. If a majority do not vote in favor of the bill and yet in a full house the majority of the whole could be had in favor of it, the bill is just laid over until the next day to give them a fair chance.

MR. VAN WINKLE. Yes, sir, that is what I said. The bill has failed for want of one or two perhaps of this constitutional majority. There is never any difficulty in getting some member to move a reconsideration, because it is thought to be an act of courtesy. But I will tell you how the thing has been done under this very provision. We have had a heavy debt imposed on the state, but with all that, that money has not come to our quarter of the state. We know that it has all been confined pretty much to one section. Here is the Orange and Alexandria Road wanted an appropriation, the Central Road wanted an appropriation, the South Side, the Petersburg and some others wanted an appropriation, and, sir, it was this: neither of them could get it without this constitutional majority. They just united together and every man interested in any of the bills voted for all of them, and so carried them all and inflicted a debt on the state that ought never to have been incurred.

MR. LAMB. Would you remedy that by striking out this provision?

MR. VAN WINKLE. No, sir, I don't know that I would. I am going to show that where bills are of importance it is possible to get a majority to pass them. But on a bill of less importance, it may be to those concerned of fully as great importance as these are to some others—you cannot get the feelings of the members up; you cannot log-roll in the way I was speaking of. I still think, sir, the provision is one that will do more harm than good applied generally.

The question was then taken on the motion to strike out and it was rejected.

MR. STEVENSON of Wood. I would like to ask the chairman of this committee whether it would not be better to insert the word "final" before the word "passage."

MR. LAMB. I observe that this is the expression used in the other constitutions on the subject. I have no objection at all to inserting the word.

MR. STEVENSON of Wood. I think it would make it clearer.

MR. VAN WINKLE. It "passes" to its second reading, "passes" to its third reading, "passes" to its engrossment, etc. It is still on its passage; is not "passed" until it gets square through.

The section was adopted.

MR. STEVENSON of Wood. I move we adjourn, Mr. President.

The motion was agreed to and the Convention adjourned.